# REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

FOR THE YEAR ENDED
31 MARCH 2004

## REVENUE RECEIPTS

GOVERNMENT OF TAMIL NADU

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# REPORT OF
# THE COMPTROLLER AND AUDITOR GENERAL
# OF INDIA

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## FOR THE YEAR ENDED 31 MARCH 2004

## (REVENUE RECEIPTS)

## GOVERNMENT OF TAMIL NADU

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## PREFACE

This report for the year ended 31 March 2004 has been prepared for submission to the Governor under Article 151(2) of the Constitution.

The audit of revenue receipts of the State Government is conducted under Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. This Report presents the results of audit of receipts comprising sales tax, land revenue, taxes on vehicles, state excise, stamp duty and registration fees, urban land tax, electricity duty and non-tax receipts.

The cases mentioned in this report are among those which came to notice in the course of test audit of records during the year 2003-2004 as well as those noticed in earlier years, but could not be included in previous years' Reports.

## OVERVIEW

The Audit Report contains 22 paragraphs including 2 reviews relating to non levy/short levy of taxes, interest, penalty, etc., involving Rs.815.05 crore. Some of the major findings are mentioned below:

## I. General

(i) The revenue raised by the State during 2003-04 amounted to Rs.18,038.76 crore comprising Rs.15,944.97 crore as tax revenue and Rs.2,093.79 crore as non-tax revenue. Rs.3,544.20 crore were received from the Government of India as State's share of divisible Union taxes and Rs.2,122.75 crore as grants-in-aid.

Sales tax (Rs.11,004.63 crore) formed a major portion (69 per cent) of the tax revenue of the State. Interest receipts, dividends and profits of Rs.559.74 crore accounted for 27 per cent of the non-tax revenue.

***( Paragraph 1.1 )***

(ii) At the end of 2003-04, the arrears in respect of taxes administered by the Departments of Commercial Taxes, Revenue, Industries, etc., amounted to Rs.7,246.93 crore of which sales tax and mines and minerals together accounted for Rs.6,926.34 crore.

***( Paragraph 1.5 )***

(iii) Test-check of records of sales tax, state excise, land revenue, urban land tax, taxes on vehicles and other departmental offices conducted during the year 2003-04 revealed under-assessments, short-levy, loss of revenue, etc., amounting to Rs.917.59 crore in 2206 cases.

***( Paragraph 1.10 )***

(iv) As at the end of June 2004, 5629 Inspection Reports issued upto December 2003 containing 18,709 audit observations with money value of Rs.2,139.19 crore were pending settlement with various departments.

***( Paragraph 1.11 )***

## II. Sales Tax

Incorrect grant of exemption on sale of medicines by a hospital to persons other than its patients, resulted in non levy of tax of Rs.3.45 crore.

***( Paragraph 2.2.1 )***

Incorrect allowance of exemption on auction sale of sandalwood logs resulted in non levy of tax of Rs.4 crore.

***( Paragraph 2.2.2 )***

Incorrect allowance of exemption on sale of lottery tickets by two dealers during 1999-2000 resulted in non-levy of additional sales tax of Rs.27.58 crore.

***( Paragraph 2.4 )***

Non-levy of interest for belated payment of tax, amounted to Rs.1.08 crore.

***( Paragraph 2.5 )***

## III. Land Revenue

Failure of the department to raise demand in respect of lands assigned to an engineering college resulted in non-realisation of land cost of Rs.2.18 crore .

***( Paragraph 3.2 )***

Inordinate delay on the part of Government to lease out land and to raise demand for lease rent despite orders of High Court of Madras resulted in Government exchequer being deprived of Rs.89.55 lakh.

***( Paragraph 3.3 )***

## IV. Taxes on Vehicles

Due to incorrect classification of Light Motor Vehicles as maxi cab there was short-realisation of tax of Rs.2.51 crore.

***( Paragraph 4.2 )***

Delay in issue of notification to revise the rates for issue of fresh/renewal of driving licenses resulted in short-realisation of tax amounting to Rs.2.29 crore.

***( Paragraph 4.3 )***

## V Stamp Duty and Registration Fees

**A review; Stamp Duty** revealed the following:

Comparison of stamp duty realised by sale of stamp papers used in the registration of the documents between 1998-1999 to 2002-2003 with the sale of non judicial stamp papers booked in the treasury accounts revealed that the value of stamp papers shown as utilised in registration was more by Rs.189.68 crore than the value of stamp papers sold.

***( Paragraph 5.2.7 )***

The accounts of 14 licensed stamp vendors revealed that there was discrepancy to the tune of Rs.6.83 crore in the sale account of stamp papers as reported to the District Registrars by the vendors with the value of stamp papers purchased from the treasuries.

***( Paragraph 5.2.8 )***

There was excess utilisation of insurance stamps by Nationalised Insurance Companies to the tune of Rs.8.40 crore as against the sales made by the concerned department during the years from 1998-1999 to 2001-2002.

***( Paragraph 5.2.9 )***

## VI. Urban Land Tax

Omission to assess urban lands in 5 assessment divisions involving 78 assessees resulted in non-levy of urban land tax of Rs.90.33 lakh.

***( Paragraph 6.2 )***

## VII. Electricity Duty

Omission to levy interest for belated payment of electricity tax for the period 1999-2000 to 2002-2003 resulted in non-collection of Rs.23.22 crore.

***( Paragraph 6.3 )***

Omission to levy electricity duty and tax in respect of electrical energy generated during the period from April 2000 to March 2003 resulted in non-realisation of revenue amounting to Rs.6.35 crore.

***( Paragraph 6.4 )***

## VIII. Mines and Minerals

**A review on Receipts under Mines and Minerals** revealed the following:

Due to non-fixing of lease amount by Government in respect of 118 lessees even after four years from the date of proposals sent by the Director, lease amount of Rs.395.17 crore for the years 1996-1997 to 2003-2004 was not realised.

Failure of the department to evict the lessee and to raise double the rate of lease amount resulted in non-realisation of lease amount of Rs.126.62 crore.

***(Paragraph 7.2.7 )***

Registration of lease deed in respect of two companies were made at nominal rates instead of as per the provisions of the act resulted in short recovery of Stamp Duty and Registration Fees of Rs.10.50 crore.

***(Paragraph 7.2.10 )***

# CHAPTER I

# GENERAL

## 1.1 Trend of revenue receipts

**1.1.1** The tax and non-tax revenue raised by the Government of Tamil Nadu during the year 2003-2004, the state's share of divisible Union taxes and grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are given below:

**(In crore of rupees)**

| | | 1999-2000 | 2000-2001 | 2001-2002 | 2002-2003 | 2003-2004 |
|---|---|---|---|---|---|---|
| I | Revenue raised by the State Government | | | | | |
| | (a) Tax Revenue | 10,918.93 | 12,282.24 | 13,009.70 | 14,341.71 | 15,944.97 |
| | (b) Non-tax revenue* | 1,356.85<br>(1,317.66) | 1,710.78<br>(1,657.10) | 1,556.73<br>(1,499.85) | 1,860.62<br>(1,742.46) | 2,093.79<br>(2,058.53) |
| | **Total** | **12,275.78**<br>**(12,236.59)** | **13,993.02**<br>**(13,939.34)** | **14,566.43**<br>**(14,509.55)** | **16,202.33**<br>**(16,084.17)** | **18,038.76**<br>**(18,003.50)** |
| II | Receipts from the Government of India | | | | | |
| | (a) State's share of divisible Union taxes | 2,667.00 | 2,783.75 | 2,870.07 | 3,047.57 | **3,544.20 |
| | (b) Grants-in-aid | 1,384.75 | 1,539.89 | 1,381.54 | 1,586.84 | 2,122.75 |
| | **Total** | **4,051.75** | **4,323.64** | **4,251.61** | **4,634.41** | **5,666.95** |
| **III** | **Total receipts of the State [(I) + (II)]** | 16,327.53<br>(16,288.34) | 18,316.66<br>(18,262.98) | 18,818.04<br>(18,761.16) | 20,836.74<br>(20,718.58) | 23,705.71<br>(23,670.45) |
| **IV** | **Percentage of I to III** | 75 | 76 | 77 | 77 | 76 |

* Figures in brackets representing non-tax revenue include receipts from lotteries net of expenditure on prize winning tickets.

** For details please see Statement No.11 – Detailed Accounts of Revenue by Minor Heads of the Finance Accounts of the Government of Tamil Nadu for the year 2003-04. Figures under the Head '0021 – Taxes on Income other than Corporation Tax – Share of net proceeds assigned to States' booked in the Finance Accounts under 'A – Tax Revenue' have been excluded from revenue raised by the state and included in 'State's share of divisible Union taxes' in this statement.

Of the total receipts (Rs.23,705.71 crore) for the year 2003-04, 76 *per cent* were raised by the State Government and remaining 24 *per cent* came from the Union Government as state's share of divisible Union taxes and grants-in-aid.

**1.1.2** The details of tax revenue raised during the year 2003-2004 along with the figures for the preceding four years are given below:

**(In crore of rupees)**

| Sl. No. | Heads of Revenue | 1999-00 | 2000-01 | 2001-02 | 2002-03 | 2003-04 | Percentage of increase (+) or decrease (-) in 2003-2004 over 2002-2003 |
|---|---|---|---|---|---|---|---|
| 1 | Sales Tax | 7,024.23 | 8,197.15 | 8,385.59 | 9,589.60 | 11,004.63 | (+) 15 |
| 2 | State Excise | 1,833.70 | 1,868.68 | 2,058.22 | 2,113.61 | 1,657.10 | (-) 22 |
| 3 | Stamp Duty and Registration Fees | 817.58 | 910.20 | 1,137.89 | 1,079.12 | 1,316.40 | (+) 22 |
| 4 | Taxes on Vehicles | 577.98 | 590.44 | 648.43 | 745.62 | 934.29 | (+) 25 |
| 5 | Land Revenue | 47.23 | 55.72 | 50.47 | 8.40 | 17.50 | (+) 108 |
| 6 | Taxes on Agricultural Income | 17.78 | 5.23 | 2.02 | 1.63 | 1.25 | (-) 23 |
| 7 | Taxes on Immovable Property other than Agricultural Land (Urban Land Tax) | 11.47 | 11.65 | 14.11 | 12.69 | 12.03 | (-) 5 |
| 8 | Others | 588.96 | 643.17 | 712.97 | 791.04 | 1,001.77 | (+) 27 |
| | **Total** | **10,918.93** | **12,282.24** | **13,009.70** | **14,341.71** | **15,944.97** | |

**Sales Tax**: The increase (15 *per cent*) was mainly due to increase of 22 *per cent* under Central Sales Tax Act and 14 *per cent* under State Sales Tax Act.

**State Excise**: The shortfall (22 *per cent*) was due to overall decrease in receipts under Malt Liquor, Country Spirits, Foreign Liquors and Spirits, etc.

**Stamp Duty and Registration Fees**: The increase (22 *per cent*) was due to increase of 34 *per cent* under Stamps-Judicial, 25 *per cent* under Stamps Non Judicial and 10 *per cent* under Registration Fees.

**Taxes on Vehicles**: The increase (25 *per cent*) was mainly due to increased receipts of 40 *per cent* under State Motor Vehicles Taxation Act. This was partly offset by decrease of 27 *per cent* under Other Receipts and 17 *per cent* under Indian Motor Vehicles Act.

Reasons for increase/shortfall though called for from other departments have not been received (September 2004).

**1.1.3** The details of major non-tax revenue realised during the year 2003-2004 alongwith the figures for the preceding four years are given below:

**(In crore of rupees)**

| Sl. No. | Heads of Revenue | 1999-00 | 2000-01 | 2001-02 | 2002-03 | 2003-04 | Percentage of increase (+) or decrease (-) in 2003-2004 over 2002-2003 |
|---|---|---|---|---|---|---|---|
| 1 | Interest Receipts, Dividends and Profits | 388.74 | 440.17 | 535.42 | 594.70 | 559.74 | (-) 6 |
| 2 | Crop Husbandry | 75.13 | 64.87 | 79.19 | 62.22 | 61.61 | (-) 1 |
| 3 | Forestry and Wild Life | 130.08 | 131.18 | 97.04 | 157.44 | 90.21 | (-) 43 |
| 4 | Non-Ferrous Mining and Metall-urgical Industries | 113.25 | 395.33 | 160.40 | 181.09 | 377.54 | (+) 108 |
| 5 | Education, Sports, Art and Culture | 44.86 | 53.75 | 65.79 | 89.50 | 122.58 | (+) 37 |
| 6 | Other Receipts | | | | | | |
| | (a) State Lotteries | 124.41 | 121.66 | 126.70 | 119.50 | 22.18 | (-) 81 |
| | (b) Others | 480.38 | 503.82 | 492.19 | 656.17 | 859.93 | (+) 31 |
| | **Total** | **1,356.85** | **1,710.78** | **1,556.73** | **1,860.62** | **2,093.79** | |

**Non-Ferrous Mining and Metallurgical Industries:** The increase (108 *per cent*) was due to increase in receipts under mineral concession fees, rents and royalties and other receipts.

**State Lotteries**: The decrease (81 *per cent*) was due to ban on sale of lotteries in the State during 2003-04 resulting in sharp decline in receipts from sale of lotteries.

Reasons for increase/shortfall though called for from other departments have not been received (September 2004).

## 1.2 Variations between budget estimates and actuals

The variation between the budget estimates and actuals of revenue receipts for the year 2003-2004 in respect of the principal heads of tax and non-tax revenue are given below:

**(In crore of rupees)**

| Sl. No | Heads of Revenue | Budget estimates | Actuals | Variations excess (+) or short-fall (-) | Percentage of variation |
|---|---|---|---|---|---|
| 1 | Sales Tax | 10,475.50 | 11,004.63 | (+) 529.13 | (+) 5 |
| 2 | State Excise | 2,263.59 | 1,657.10 | (-) 606.49 | (-) 27 |
| 3 | Stamp Duty and Registration Fees | 1,278.61 | 1,316.40 | (+) 37.79 | (+) 3 |
| 4 | Taxes on vehicles | 878.41 | 934.29 | (+) 55.58 | (+) 6 |
| 5 | Land Revenue | 20.50 | 17.50 | (-) 3.00 | (-) 15 |
| 6 | Taxes on Agricultural Income | 5.00 | 1.25 | (-) 3.75 | (-) 75 |
| 7 | Taxes on Immovable Property other than Agricultural Land (Urban Land Tax) | 13.50 | 12.03 | (-) 1.47 | (-) 11 |
| 8 | Taxes and Duties on Electricity | 209.52 | 228.00 | (+) 18.48 | (+) 9 |
| 9 | Interest Receipts, Dividends & profits | 439.39 | 559.74 | (+) 120.35 | (+) 27 |
| 10 | Non-Ferrous Mining and Metallurgical Industries | 169.23 | 377.54 | (+) 208.31 | (+) 123 |
| 11 | Crop Husbandry | 77.78 | 61.61 | (-) 16.17 | (-) 21 |
| 12 | Roads and Bridges | 26.20 | 24.60 | (-) 1.60 | (-) 6 |
| 13 | Major and Medium Irrigation | 11.87 | 12.71 | (+) 0.84 | (+) 7 |

**State Excise**: The shortfall (27 *per cent*) was due to overall decrease in receipts under Malt Liquor, Country Spirits, Foreign Liquors and Spirits, etc.

**Taxes and Duties on Electricity:** The increase (nine *per cent*) was due to the introduction of new Taxation Act on consumption and sale of Electricity in June 2003.

**Non-Ferrous Mining and Metallurgical Industries:** The increase (123 *per cent*) was due to increase in receipts under mineral concession fees, rents and royalties and other receipts.

Reasons for variations though called for from other departments have not been received (September 2004).

## 1.3 Cost of collection

The gross collection in respect of major revenue receipts, expenditure incurred on collection and the percentage of such expenditure to gross collection, during the years 2001-2002, 2002-2003 and 2003-2004 along with the relevant All India Average percentage of expenditure on collection to gross collection for 2002-2003 were as follows:

**(In crore of rupees)**

| Sl. No | Heads of Revenue | Year | Collection | Expenditure on collection of revenue | Percentage of expenditure on collection | All India Average percentage for the year 2002-2003 |
|---|---|---|---|---|---|---|
| 1 | Sales Tax | 2001-2002 | 8,385.59 | 96.93 | 1.16 | 1.18 |
| | | 2002-2003 | 9,589.60 | 93.64 | 0.98 | |
| | | 2003-2004 | 11,004.63 | 93.70 | 0.85 | |
| 2 | Taxes on Vehicles | 2001-2002 | 648.43 | 27.05 | 4.17 | 2.86 |
| | | 2002-2003 | 745.62 | 35.29 | 4.73 | |
| | | 2003-2004 | 934.29 | 34.69 | 3.71 | |
| 3 | State Excise | 2001-2002 | 2,058.22 | 22.44 | 1.09 | 2.92 |
| | | 2002-2003 | 2,113.61 | 23.15 | 1.10 | |
| | | 2003-2004 | 1,657.10 | 19.84 | 1.20 | |
| 4 | Stamp Duty and Registration Fees | 2001-2002 | 1,137.89 | 54.15 | 4.76 | 3.46 |
| | | 2002-2003 | 1,079.12 | 71.85 | 6.66 | |
| | | 2003-2004 | 1,316.40 | 79.00 | 6.00 | |

It can be seen from the above that the percentage of expenditure on collection of taxes on vehicle and stamp duty and registration fee was higher than the All India average.

## 1.4 Collection of sales tax per assessee

**(In crore of rupees)**

| Year | No. of assessees | Sales tax revenue | Revenue/ assessee |
|---|---|---|---|
| 1999-2000 | 1,09,677 | 7,024.23 | 0.06 |
| 2000-2001 | 1,06,242 | 8,197.15 | 0.08 |
| 2001-2002 | 1,06,946 | 8,385.59 | 0.08 |
| 2002-2003 | 1,45,489 | 9,589.60 | 0.07 |
| 2003-2004 | 1,57,126 | 11,004.63 | 0.07 |

## 1.5 Arrears of revenue

The arrears of revenue as on 31 March 2004 in respect of some principal heads of revenue amounted to Rs.7,246.93 crore of which Rs.1,662.93 crore were outstanding for more than five years as detailed in the following table:

**(In crore of rupees)**

| Sl. No. | Heads of Revenue | Amount outstanding as on 31 March 2004 | Amount outstanding for more than 5 years as on 31 March 2004 | Remarks |
|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 |
| 1 | Sales Tax | 6,529.12 | 1,286.84 | Out of total arrears of Rs.6,529.12 crore, demands amounting to Rs.2,324.63 crore were covered under Revenue Recovery Act. Demands amounting to Rs.934.33 crore were stayed by Government, High Court and other judicial authorities. A sum of Rs.4.42 crore was held up due to rectification/review applications. Rs.56.71 crore could not be recovered on account of the assessees becoming insolvent. A sum of Rs.100.79 crore was likely to be written off. An amount of Rs.1,895.00 crore was covered under deferral and a sum of Rs.1,205.72 crore was covered under various stages of recovery . A sum of Rs.7.52 crore had since been collected. |
| 2 | Mines and Minerals | 397.22 | 218.09 | Out of the total arrears of Rs.397.22 crore, a sum of Rs.193.30 crore was covered by recovery certificates. Demands amounting to Rs.124.29 crore were stayed by High Court and other judicial authorities. Rs.0.52 crore was stayed by Government. A sum of Rs.5.44 crore was held up due to rectification/ review applications. An amount of Rs.0.04 crore was likely to be written off and Rs.68.32 crore was under various stages of recovery. A sum of Rs.5.31 crore had since been collected. |
| 3 | Stamp Duty and Regis-tration Fees | 137.36 | 50.31 | The entire arrears of Rs.137.36 crore were covered by recovery certificates. |

| 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|
| 4 | Urban Land Tax | 99.33 | 37.93 | Out of the total arrears, Rs.5.40 crore was stayed by High Court; Rs.1.36 crore and Rs.10.86 crore were stayed by Government and Head of the Department respectively. Rs.68.63 crore was covered under various stages of recovery. Rs.13.08 crore has since been collected. |
| 5 | State Excise | 49.45 | 49.45 | Out of the total arrears of Rs.49.45 crore, Rs.11.27 crore was covered by recovery certificates. Rs.5.08 crore was stayed by High Court and Rs.3.23 crore was held up due to rectification/review applications. Rs.0.02 crore could not be collected on account of assessees becoming insolvent. A sum of Rs.4.28 crore was likely to be written off. Rs.25.15 crore was covered under various stages of recovery. Rs.0.42 crore had since been collected. |
| 6 | Land Revenue | 30.40 | 18.07 | Out of the total arrears, demands amounting to Rs.1.03 crore was covered by recovery certificates. Arrears of Rs.3.32 crore was covered by stay granted by High Court and other judicial authorities. A sum of Rs.3.20 crore was stayed by Government. A sum of Rs.3.06 crore was held up due to rectification/ review application and Rs.4.50 crore was likely to be written off. A sum of Rs.14.93 crore was under various stages of recovery. A sum of Rs.0.36 crore had since been collected. |
| 7 | Taxes on Vehicles | 4.05 | 2.24 | Out of the total arrears of Rs.4.05 crore, demands amounting to Rs.2.19 crore was covered by Recovery Certificates. Demands of Rs.0.23 crore was stayed by High Court and other judicial authorities. A sum of Rs.0.02 crore was likely to be written off and Rs.1.61 crore was under various stages of collection. |
| | Total | 7,246.93 | 1,662.93 | |

## 1.6 Arrears in assessments

The details of cases pending assessment at the beginning of the year 2003-04, cases becoming due for assessment during the year, cases disposed of during the year and number of cases pending finalisation at the end of the year 2003-04, as furnished by the Sales Tax Department in respect of Sales Tax and by Revenue Department in respect of Urban Land Tax and Agricultural Income Tax are as follows:

| Head of Revenue | Opening balance | New cases due for assessment during 2003-04 | Total assessments due | Cases disposed of during 2003-04 | Balance at the end of the year | Percentage of disposal (col. 5 to 4) |
|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Sales Tax | 48,499 | 1,64,397 | 2,12,896 | 1,59,363 | 53,533 | 75 |
| Urban Land Tax | 4,421* | 1,583 | 6,004 | 911 | 5,093 | 15 |
| Agricultural Income Tax | 166 | 2,594 | 2,760 | 2,509 | 251 | 91 |
| **Total** | **53,086** | **1,68,574** | **2,21,660** | **1,62,783** | **58,877** | |

* The difference in closing balance figures as shown in A.R. 2002-2003 and the opening figures as shown in the table above was due wrong furnishing of statistics by the Department which was subsequently rectified.

## 1.7 Evasion of tax

The details of cases of evasion of tax detected by the Sales Tax Department, cases finalised and the demands for additional tax raised as reported by the Department are given below:

**(In crore of rupees)**

| Sl. No. | Head of revenue | Cases pending as on 31 March 2003 | Cases detected during 2003-2004 | Total | Cases in which assessments/ investigations completed and additional demand including penalty etc., raised | | No. of cases pending finalisation as on 31 March 2004 |
|---|---|---|---|---|---|---|---|
| | | | | | No. | Amount | |
| 1 | Sales Tax | | | | | | |
| | i) Enforcement Wing. | 3,353 | 5,946 | 9,299 | 4,698 | NF | 4,601 |
| | ii) Administrative-Wing. | 4,367 | 2,937 | 7,304 | 3,371 | 4.15 | 3,933 |

NF – Not furnished.

## 1.8 Write-off and waiver of revenue

During the year 2003-04, demands of Rs.2.42 crore (in 1,024 cases) and Rs.2.49 lakh (in five cases) relating to sales tax and mines and minerals respectively were written off by the Departments as irrecoverable. Reasons for the write-off of these demands as reported by the Departments were as follows:

**(In lakh of rupees)**

| Sl. No. | Reasons | Sales Tax | | Mines and Minerals | |
|---|---|---|---|---|---|
| | | No. of cases | Amount | No. of cases | Amount |
| 1 | Whereabouts of defaulters not known | 993 | 205.37 | 1 | 0.60 |
| 2 | Defaulters no longer alive | 4 | 14.71 | --- | --- |
| 3 | Defaulters not having any property | 19 | 5.54 | 4 | 1.89 |
| 4 | Defaulters adjudged insolvent | 1 | 9.24 | --- | --- |
| 5 | Other reasons | 7 | 6.71 | --- | --- |
| **Total** | | **1,024** | **241.57** | **5** | **2.49** |

In addition to the above, in respect of Sales Tax an amount of Rs.10.82 crore involving 378 cases was waived off under the Samadhan Scheme.

## 1.9 Refunds

The number of refund cases pending at the beginning of the year 1 April 2003, claims received during the year, refunds allowed during the year and cases pending at the close of the year as on 31 March 2004, as reported by the departments are given below:

**(In crore of rupees)**

| Sl. No. | Particulars | Sales Tax | | Taxes on Vehicles | | Mines and Minerals | |
|---|---|---|---|---|---|---|---|
| | | No. of cases | Amount | No. of cases | Amount | No. of cases | Amount |
| 1 | Claims outstanding at the beginning of the year | 55,881 | 104.26 | 37 | 0.06 | 5 | 0.32 |
| 2 | Claims received during the year | 27,716 | 65.61 | 29 | 0.03 | 17 | 2.22 |
| 3 | Refunds made during the year | 24,549 | 71.25 | 45 | 0.07 | 16 | 2.53 |
| 4 | Balance outstanding at the end of the year | 59,048 | 98.62 | 21 | 0.02 | 6 | 0.01 |

## 1.10 Results of audit

Test check of records of sales tax, land revenue, state excise, motor vehicles tax, stamp duty and registration fees, electricity duty, other tax receipts and non-tax receipts conducted during 2003-2004 revealed under-assessment/short levy/loss of revenue amounting to Rs.917.59 crore in 2,206 cases. During the year the Departments accepted under-assessment of Rs.5.16 crore in 792 cases pointed out in 2003-04 and earlier years and recovered Rs.1.56 crore.

This Report contains 22 paragraphs including two reviews relating to non/short levy of taxes, duties, interest and penalties etc., involving Rs.815.05 crore. The Department/Government accepted audit observations involving Rs.25.34 crore of which Rs.0.18 crore had been recovered upto September 2004. Final reply has not been received in respect of the remaining cases till September 2004.

## 1.11 Failure of senior officials to enforce accountability and protect interest of Government

Audit observations on incorrect assessments, short-levy of taxes, duties and fees, etc., as also defects in the maintenance of initial records noticed during audit and not settled on the spot are communicated to the Heads of Offices and other departmental authorities through inspection reports. Serious financial irregularities are reported to the Heads of Departments concerned and the Government. The Heads of Offices are required to furnish replies to the inspection reports through their respective Heads of Departments within a period of two months.

**1.11.1** The number of inspection reports and audit observations relating to revenue receipts issued upto 31 December 2003, which were pending settlement by the Departments as on 30 June 2004, along with corresponding figures for the preceding two years, are given below:

| | Position as on 30 June | | |
|---|---|---|---|
| | **2002** | **2003** | **2004** |
| Number of inspection reports pending settlement | 5,103 | 5,627 | 5,629 |
| Number of outstanding audit observations | 19,403 | 21,348 | 18,709 |
| Amount of revenue involved **(In crore of rupees)** | 853.49 | 2,053.26 | 2,139.19 |

The increasing trend of outstanding audit reports and objections is indicative of non-compliance with Government's instruction to send replies to initial audit observations and report on further action taken thereon within the stipulated time. Though various committee such as State Audit Committee, Departmental audit committee were constituted in March 1993, the objectives

of the committees, viz., expeditious settlement of outstanding paras had not been achieved.

**1.11.2** Revenue-headwise breakup of the inspection reports and audit observations outstanding as on 30 June 2004 is given below:

| Sl. No. | Revenue Heads | Number of outstanding | | Amount (in crore of rupees) | Earliest year to which the inspection report relates |
|---|---|---|---|---|---|
| | | Inspection Reports | Audit Observations | | |
| 1 | Sales Tax | 2,592 | 11,750 | 557.06 | 1986-87 |
| 2 | Stamp duty and Registration Fees | 1,024 | 2,100 | 37.31 | 1984-85 |
| 3 | Land Revenue | 644 | 1,759 | 973.78 | 1988-89 |
| 4 | Taxes on Vehicles | 343 | 842 | 68.11 | 1983-84 |
| 5 | State Excise | 223 | 508 | 91.86 | 1987-88 |
| 6 | Taxes on Agricultural Income | 73 | 211 | 80.89 | 1986-87 |
| 7 | Mines and Minerals | 197 | 551 | 277.37 | 1989-90 |
| 8 | Urban Land Tax | 213 | 578 | 27.28 | 1983-84 |
| 9 | Electricity Duty | 63 | 114 | 14.52 | 1986-87 |
| 10 | Entertainments Tax | 107 | 117 | 8.99 | 1989-90 |
| 11 | Luxury Tax | 100 | 112 | 1.37 | 1994-95 |
| 12 | Betting Tax | 12 | 23 | 0.09 | 1991-92 |
| 13 | Entry Tax | 38 | 44 | 0.56 | 2003-04 |
| | **Total** | **5,629** | **18,709** | **2,139.19** | |

## 1.12 Departmental Audit Committee Meeting

During the course of the year 2003-04, two meetings were held in respect of Industries Department pertaining to Mines and Minerals. Twelve paras valuing Rs.14.15 lakh were settled during these meetings. However, in respect of other departments no Departmental Audit Committee meeting was held during the year 2003-04.

## 1.13 Response of the Department/Government to Draft Audit Paragraphs

Government (Finance Department) issued directions in April 1952 to all Departments to send their response to the draft audit paragraphs proposed for inclusion in the Report of the Comptroller and Auditor General of India within six weeks. The draft paragraphs are forwarded to the Secretaries of the concerned Departments through demi-official letters drawing their attention to

the audit findings and requesting them to send their response within six weeks. The fact of non-receipt of replies from the Departments are invariably indicated at the end of each such paragraphs included in the Audit Report.

Forty five draft paragraphs (clubbed into 22 paragraphs including two reviews) proposed to be included in the Report of the Comptroller and Auditor General of India for the year ended March 2004 were forwarded to the Secretaries of the respective departments during April-July 2004, through demi-official letters and followed up with reminders in August 2004.

The Secretaries of the Departments did not send replies to 39 draft paragraphs including 2 reviews. These paragraphs have been included in this Report without the response of the Secretaries of the Departments. This had resulted in non-compliance to above instructions of the Government.

## 1.14 Follow up on Audit Reports – Summarised position

With a view to ensuring accountability of the executive in respect of all the issues dealt with in Audit Reports, the Public Accounts Committee (PAC) directed that the concerned departments should furnish remedial/corrective Action Taken Notes (ATN) on all paragraphs contained therein, within the prescribed time frame.

However, a review of outstanding ATNs as of 31 March 2004 on paragraphs included in the Report of the Comptroller and Auditor General of India, Revenue Receipts, Government of Tamil Nadu, disclosed that for 866 recommendations pertaining to 265 audit paragraphs discussed by PAC, the Departments had not submitted remedial ATNs. Out of the 866 recommendations pending, ATNs were not submitted by the Departments even once in respect of 498 recommendations; the earliest of which relate to Audit Report 1986-87.

Further, PAC has also laid down that necessary explanatory notes for the issues mentioned in the audit report should be furnished to the Committee within a maximum period of two months from the date of placing of the Reports before Legislature. Though the Audit Reports for the year 1999-2000, 2000-2001 and 2001-2002 were placed before the Legislative Assembly in September 2001, May 2002 and May 2003 respectively, the Departments are yet to submit Explanatory Notes for 60 paragraphs (including 7 reviews) included in these reports.

# CHAPTER II

# SALES TAX

## 2.1 Results of Audit

Test check of records of departmental offices conducted during the period from April 2003 to March 2004, revealed under-assessment, non-levy of interest/penalty, etc., amounting to Rs.73.69 crore in 1,242 cases, which broadly fall under the following categories.

**(In crore of rupees)**

| Sl. No. | Categories | No. of cases | Amount |
|---|---|---|---|
| 1 | Incorrect grant of exemption from levy of tax | 278 | 29.56 |
| 2 | Application of incorrect rate of tax | 345 | 21.97 |
| 3 | Incorrect computation of taxable turnover | 166 | 3.93 |
| 4 | Non levy of penalty | 148 | 2.54 |
| 5 | Non levy of interest | 163 | 2.39 |
| 6 | Others | 142 | 13.30 |
| | **Total** | **1,242** | **73.69** |

During the course of the year 2003-2004, the Department accepted under assessment etc., amounting to Rs.2.98 crore in 651 cases, out of which Rs.88.50 lakh involving 455 cases were pointed out during the year and the rest in earlier years. Of these, the Department recovered Rs.1.16 crore.

A few illustrative cases involving a financial effect of Rs.37.71 crore are mentioned below:

## 2.2. Incorrect grant of exemption from levy of tax

**2.2.1** As per entry 28 of Part C of the First Schedule to the Tamil Nadu General Sales Tax (TNGST) Act, 1959, sale of drugs and medicines is taxable at the rate of eight *per cent* at the point of first sale inside the State. As per notification issued in March 1959 under the Madras General Sales Tax Act, 1959 and modified in August 1961, sale of medicines by every private medical practitioner owning dispensaries and dispensing medicines to his patients only, whether he charges consultation fee or not, is exempt from tax. It has been judicially held[1] by the Madras High Court that where hospitals, nursing homes and dispensaries sell medicines to others, in addition to or independent of their patients, such cases would not come within the scope of the Government Order.

In Adayar-I assessment circle, in respect of an assessee, a public limited company running a hospital for medical treatment of patients, during 2001-2002, a turnover of Rs.36.15 crore was allowed exemption on sale of drugs and medicines to patients. In the instant case, the hospital also runs a chain of pharmacies across the State, wherein sale of medicines is effected to persons other than the patients of the hospital. Therefore the exemption allowed was not in order, which had resulted in non levy of tax of Rs.3.45 crore (inclusive of additional sales tax).

After this was pointed out in Audit in July 2003, the Department replied in July 2003 and January 2004 that the sale of drugs and medicines to the patients in the hospital run by a Board of Directors through paid medical practitioners is eligible for exemption. The contention of the Department was not acceptable as the notification envisaged exemption on sale of drugs and medicines by medical practitioner who own a dispensary in case such sales were made only to his patients. In the instant case, sale of drugs and medicines by the assessee was effected not only to its patients but also to others and as per the judicial decision, the case of the assessee would not fall within the scope of the Government Order. Further the hospital was owned by a public limited company and not by a medical practitioner.

The matter was reported to the Government in January 2004 and followed up with reminder in August 2004. Reply of the Government was awaited (September 2004).

**2.2.2** Under the Central Sales Tax (CST) Act, 1956, the last sale or purchase occasioning the export of the goods out of the territory of India shall be deemed to be in the course of such export, if such last sale or purchase took place after and was for the purpose of complying with the agreement or order for or in relation to such export. It has been judicially held[2] that to avail of the exemption from levy of tax on such preceding sale, the goods exported should

1 Narayanaswami Pillai Vs. State of Tamil Nadu – 39 STC P307 (Madras).

2 Sterling Foods Vs. State of Karnataka 63 STC 239 (SC).

be the same as that purchased under the agreement. As per the Export Import (EXIM) policy of the Government of India, sandalwood logs are in the negative list whereas sandalwood chips, powder, flakes are in the restricted list of the said policy. Thus logs and chips are distinct and different commodities.

In three[3] offices, on sale of sandalwood logs amounting to Rs.40.16 crore made by the Forest Department during the years 1994-95 to 2002-03 in 16 cases, tax was not levied on the ground that the sales were made in the course of export. As export was in the form of flakes, chips, etc., the non collection of tax on the penultimate sale by the Forest Department was not in order. This resulted in non-realisation of tax of Rs.4 crore (inclusive of surcharge).

After this was pointed out, the Department replied that as per the analogy of the Supreme Court's decisions[4] the conversion of sandalwood logs into chips, flakes, etc. does not amount to manufacture and as per the clarification of the Commissioner of Commercial Taxes (CCT) issued in 1986, sandalwood logs when cut into different sizes for export do not alter the characteristic of the original commodity and therefore the exemption allowed was in order.

The reply is not tenable in view of the subsequent clarification of the CCT issued in September 1997 that sale of sandalwood to the exporter was not eligible for exemption under the CST Act, as sandalwood logs were not exported as such, and were converted into different commodity. The judicial decisions rendered with reference to other commodities, could not be extended to sandalwood, a commodity covered by the restrictions of the EXIM policy.

The matter was reported to the Government in May 2004 and followed up with reminder in August 2004. Reply of the Government was awaited (September 2004).

**2.2.3** As per the CST Act, inter-state sale of goods not covered by declarations in Form 'C' is taxable at the local rate applicable to such sale inside the appropriate State or 10 *per cent*, whichever is higher. It has been judicially held[5] by the Madras High Court that supply of goods by All India Skin and Hides Tanners and Merchants Association (Association) to its members would constitute a sale. As per the TNGST Act, sale of raw materials, packing materials and consumable goods to 100 *per cent* Export Oriented Unit (EOU) in the State is exempt from tax.

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3 Salem, Sathyamangalam and Tirupathur.

4 Lal Kurwa Stone Crusher (P) Ltd. Vs. Commissioner of Sales Tax, Uttar Pradesh – 118 STC P287 (SC)
Ram Babu Tagore (P) Ltd. Vs. Coffee Board, Bangalore – 80 STC P199 (SC).

5 All India Skin and Hides Tanners and Merchants Association Vs. Commercial Tax Officer – 127 STC P491 (Mad).

Test check of records in five assessment circles, revealed that exemption was incorrectly granted between April 1998 and February 2003 to six dealers on a turnover of Rs.6.05 crore during the years between 1994-95 and 2001-2002. The non levy of tax in these cases, amounted to Rs.62 lakh as detailed below:

**(in lakh of rupees)**

| Sl. No | Assessment circle (No. of dealers) | Year of transactions/ (Month/Year of assessment) | Nature of irregularity | Tax-able Turn-over | Tax leviable |
|---|---|---|---|---|---|
| 1 | Chinglepet (One) | 1997-98 to 2000-01 (between July1999 and August 2002). | Inter-State sale of EXIM scrip/ duty entitlement pass book licence was incorrectly exempted treating the same as stock transfer. | 455.96 | 48.29 |
| **Remarks:** The Department replied that the transaction was branch transfer and, therefore, not exigible to tax.<br><br>The reply is not tenable as independent cross verification in audit revealed that the branch office was not in the computerised master register of dealers maintained at the office concerned at Kolkata. The transaction was, therefore, to be construed as one of sale not covered by declaration in form 'C'. | | | | | |
| 2 | Ooty (North) (One) | 2001-02 (February 2003) | Turnover on account of airtime charges representing right to use the facility of cellular service provider was erroneously allowed exemption. | 62.95 | 6.92 |
| **Remarks:** After this was pointed out in audit in September 2003, the Department contended in December 2003 that the turnover represented air time charges only and was not liable to tax.<br><br>The reply is not tenable in view of the decision of the Kerala High Court[6] that the supply of SIM card and activation represents transfer of property in goods and the entire consideration moving from the subscriber to the service provider including the activation charges, would be exigible to tax. | | | | | |

6 Escotal Mobile Communications Ltd. Vs. Union of India and others – 126 STC P.475 (Ker.)

(in lakh of rupees)

| Sl. No | Assessment circle (No. of dealers) | Year of transactions/ (Month/Year of assessment) | Nature of irregularity | Tax-able Turn-over | Tax leviable |
|---|---|---|---|---|---|
| 3 | Nagercoil (Rural) (One) | 1997-98 (January 1999) | Last purchase of wattle extract, sale of capacitors and sale of raw materials to 100% EOU situated outside the State was erroneously allowed exemption | 18.68 | 2.05 |
| | Ranipet (Two) | 1994-95 (April 1998) 1995-96 (March 2000) | | 48.30 | 2.65 |
| | Manali (One) | 1997-98 (December 2000) 1998-99 (July 2002) | | 19.03 | 2.09 |
| **Remarks:** The Department revised the assessments during July/August 2003 and January 2004 and raised additional demand of Rs.4.70 lakh. Reply of the Department in respect of Manali was awaited (September 2004). | | | | | |
| **Total** | | | | **604.92** | **62.00** |

The matter was reported to the Government between November 2003 and May 2004 and followed up with reminder in August 2004. Reply of the Government was awaited (September 2004).

## 2.3. Application of incorrect rate of tax

**2.3.1** As per TNGST Act, on sale of any goods, tax is leviable at the concessional rate of three *per cent* on turnover of such sale, under certain conditions and subject to the production of declarations in prescribed form obtained from the purchaser. As per clarification issued in October 2001 by the CCT, water purifying machine and parts thereof are taxable as electrical appliances. The CCT has also clarified in June 2003 that wood sealer is taxable at the rate of 16 *per cent* under entry 18 of Part E of the First Schedule at the point of first sale inside the State.

In nine assessment circles, while finalising the assessments between March 1998 and March 2003, tax was levied short due to application of incorrect rate of tax on a turnover of Rs.9.29 crore involving 10 dealers during the years 1995-96, 1997-98 to 2000-2001. The short levy of tax, worked out to Rs.55.70 lakh as detailed below:

(in lakh of rupees)

| Sl. No. | Assessment circle (No. of dealers) | Year of transaction (Month/ year of assessment) | Commodity | Taxable turnover | Rate of Tax (*per cent*) | | Amount short levied |
|---|---|---|---|---|---|---|---|
| | | | | | Appli-cable | App-lied | |
| 1 | Saibaba colony, Coimbatore (One) | 1995-96 (March 1998) | Electronic water purifier | 97.80 | 12 | 3 | 28.57 |
| | | 1998-99 (December 2002) | | 200.91 | 16 | 11 | |
| | | 1999-00 (April 2002) | | 142.63<br>27.19 | 16 | 11<br>12 | |

**Remarks:** The Department stated in December 2003, that in the absence of specific entry in the Schedule for water purifier, the assessment was made at three *per cent* treating it as electronic goods during 1995-96 and at 11/12 *per cent* as residuary item during 1998-99 and 1999-2000.

The reply is not tenable in view of clarification of CCT that electronic water purifier would fall within the scope of "electrical appliances" and taxable accordingly. Further reply was awaited (September 2004).

| Sl. No. | Assessment circle (No. of dealers) | Year of transaction (Month/ year of assessment) | Commodity | Taxable turnover | Applicable | Applied | Amount short levied |
|---|---|---|---|---|---|---|---|
| 2 | Rock Fort Trichy (Two) | 1997-98 (December 1998)<br>1998-99 (September 1999)<br>1999-00 (June 2001)<br>2000-01 (January 2002) | Date Syrup sold under brand name. | 203.24 | 16 | 11 | 10.16 |

**Remarks:** The Department contended in December 2000 and August 2002 that the assessments were based on the clarification of the CCT in July 1998, that date syrup would fall under the entry relating to 'squashes and essences', and therefore in order. The CCT further contended in August 2002 that as per judicial decision[7] when there are competing entries in the Schedule to the Act, the lower rate was applicable.

The reply is not tenable as date syrup cannot be termed as squash, as unlike other squashes, date syrup is capable of direct consumption and date syrup, being a preparation of fruit is taxable under the specific entry, viz., entry 4 of Part E of the First Schedule and there being no ambiguity regarding the classification of date syrup, the judicial decision quoted by the Department is not applicable to the instant case. Further reply was awaited (September 2004).

[7] Bharat Vijay Mills Ltd. Vs. Commissioner of CT- 85 STC P22 (Kar.)

**(in lakh of rupees)**

| Sl. No. | Assessment circle (No. of dealers) | Year of transaction (Month/ year of assessment) | Commodity | Taxable turnover | Rate of Tax (*per cent*) | | Amount short levied |
|---|---|---|---|---|---|---|---|
| | | | | | Appli-cable | App-lied | |
| 3 | Aranthangi (One) | 2000-01 (April 2002) | Confectionery sold under brand name. | 12.23 | 11 | 4 | 0.86 |
| | Kangeyam (One) | 1997-98 (February 2000) | MIG $CO_2$ MS wire (Soldering wire). | 25.79 | 11 | 4 | 1.81 |
| | | 1999-00 (April 2001) | MIG $CO_2$ MS wire, not covered by Form XVII declaration. | 10.13 | 11 | 3 | 0.81 |
| | Thallakulam (One) | 2000-01 (September 2002) | Catering sale of food and drinks. | 42.11 | 8 | 2 | 2.53 |

**Remarks:** In the case of Kangeyam, the Department contended that the assessment was made in accordance with the clarification of the CCT issued in December 2000 that copper coated mild steel wire was a declared good, taxable at four *per cent*.

The reply is not tenable as scrutiny of excise invoice revealed the commodity as MIG $CO_2$ welding wire of size 0.88 mm, which was nothing but soldering wire, taxable at the rate of 11 *per cent*.

In the case of Thallakulam, the Department revised the assessments in December 2003, raising an additional demand of Rs.2.53 lakh. Reply of the Department in respect of the other case was awaited (September 2004).

**(in lakh of rupees)**

<table>
<tr><th rowspan="2">Sl. No</th><th rowspan="2">Assessment circle (No. of dealers)</th><th rowspan="2">Year of transaction (Month/ year of assessment)</th><th rowspan="2">Commodity</th><th rowspan="2">Taxable turnover</th><th colspan="2">Rate of Tax (per cent)</th><th rowspan="2">Amount short levied</th></tr>
<tr><th>Appli-cable</th><th>App-lied</th></tr>
<tr><td>4.</td><td>Adayar-I, (One)</td><td>2000-01 (March 2003)</td><td>Modular Kitchen</td><td>67.11</td><td>11</td><td>4</td><td>4.70</td></tr>
<tr><td></td><td>Esplanade-I (One)</td><td>2000-01 (July 2002)</td><td>Roller Bearings</td><td>23.09</td><td>8</td><td>3</td><td>1.15</td></tr>
<tr><td colspan="8">Remarks: In respect of Adayar-I, the Department replied in December 2003 that the transaction was one of works contract and the assessment made at four per cent on the basis of option exercised by the dealer was in order.<br><br>The reply is not tenable as it had been observed by the Supreme Court[8] that whether a particular contract was one for sale of goods or for work and labour depends upon the main object of the parties found out from an overview of the terms of the contract, the circumstances of the transaction and custom of the trade. The Apex Court had accordingly held that if the thing has any individual existence before the delivery as the sole property of the party who was to deliver it, then it was a sale. If the major component of the end product was the material consumed in producing the chattel to be delivered and skill and labour were employed for converting the main components into the end products, the skill and labour are only incidentally used, the delivery of the end product by the seller to the buyer would constitute a sale.<br><br>In the case of Esplanade-I the Department revised the assessment in May 2003 and raised an additional demand of Rs.1.15 lakh; the collection particulars of which was awaited (September 2004).</td></tr>
<tr><td>5</td><td>Kilpauk, (One)</td><td>2000-01 (September 2001)</td><td>Wood sealer,</td><td>45.84</td><td>16</td><td>11</td><td>2.29</td></tr>
<tr><td></td><td>Guindy (One)</td><td>2000-01 (March 2002)</td><td>Disposable diapers</td><td>31.35</td><td>20</td><td>11</td><td>2.82</td></tr>
<tr><td colspan="8">Remarks: In respect of Kilpauk, the Department replied in December 2002 that the assessment made by treating the product as unclassified was in order.<br><br>The reply is not tenable as "wood sealer" used for surface preparations was taxable at the rate of 16 per cent. The Department revised the assessment in the case of Guindy assessment circle in August 2003, raising an additional demand of Rs.2.82 lakh of which an amount of Rs.0.71 lakh had been collected. The appeal preferred by the dealer against the revision of assessment was pending. Further reply was awaited (September 2004).</td></tr>
<tr><td colspan="4">Total</td><td>929.42</td><td></td><td></td><td>55.70</td></tr>
</table>

The matter was reported to the Government between August 2003 and April 2004 and followed up with reminder in August 2004. Government, in the case of Rock Fort assessment circle, while endorsing the views of the Department, stated in July 2004 that date syrup, not being a solid nourishment

8 Hindustan Shipyard Ltd. Vs. State of A.P. – 119 STC P533 (SC).

cannot be termed as food and date syrup is not a preparation of fruits but is only a syrup obtained from fruits. The reply of the Government is not tenable as it had been held[9] by the Supreme Court that "food" may either be solid or liquid, but it should possess the quality to maintain life and its growth; it must have nutritive value so as to enable growth, repair or maintenance of body. Date syrup has been marketed by the dealers themselves as a syrup and nutritious drink. Further, date syrup is capable of being directly consumed as an energy substitute and was accordingly classifiable as food preparation only. Reply of the Government in respect of other cases was awaited (September 2004).

**2.3.2** Under the provisions of the CST Act, on inter-State sale of declared goods not covered by valid declarations in Form 'C', tax is leviable at double the rate applicable to sale of such goods inside the State and on inter-State sale of goods other than declared goods, tax is leviable at four *per cent*, if the sales are covered by valid declarations in Form 'C'. Where such sales are not covered by declarations in Form 'C', the rate of tax applicable is 10 *per cent* or the local rate, whichever is higher. By a notification issued in March 1997, the rate of tax on inter-state sale of man-made staple fibres, fibre yarn, filament yarn and waste of any of these commodities was reduced to two *per cent*, provided the dealer had not effected any branch transfer or consignment transfer during the year.

In Manali and Tambaram-I assessment circles, while finalising the assessments between May 2002 and January 2003, tax was levied short due to application of incorrect rate of tax on a turnover of Rs.7.29 crore involving two dealers during the years 1996-97 and 1998-99. The short levy of tax, pointed out by audit worked out to Rs.22.04 lakh.

After this was pointed out, the Department accepted in October 2003 under assessment of Rs.6.30 lakh in one case. Further reply was awaited (September 2004).

The matter was reported to the Government between November 2003 and April 2004 and followed up with reminder in August 2004. Government accepted the audit observations in one case. Reply of the Government in respect of other was awaited (September 2004).

## 2.4 Non levy of additional sales tax

Under the Tamil Nadu Additional Sales Tax Act, 1970, additional sales tax was leviable at the rate of three *per cent* on the taxable turnover, where the taxable turnover of a dealer exceed three hundred crore of rupees in a year (with effect from 1 April 1998). As per the TNGST Act, lottery ticket was taxable at four *per cent* at the point of first sale in the State. As per the

9 S. Samuel Vs. Union of India – 134 STC P610 (SC).

provisions of Section 7-D of the TNGST Act, a dealer in lottery tickets has been given the option of paying compounded amount of tax determined on the basis of type of draw and the rate per draw. Where a dealer has paid compounded amount in respect of sale of a particular name and type of lottery tickets, the tax in respect of the sale of such lottery tickets by any other dealer or person liable to pay tax shall be deemed to have been paid in the same manner.

In Thudiyalur assessment circle, while finalising in April 2000 the assessments of two subsequent dealers of lottery tickets, in respect of which compounded amount of tax had been paid earlier, the turnovers of Rs.919.38 crore representing sale of lottery tickets, effected during 1999-2000 was not considered for assessment, by treating it as second sales. The incorrect allowance of exemption has resulted in non levy of additional sales tax amounting to Rs.27.58 crore.

After this was pointed out in June 2002, the Government replied in June 2004, that as the compounded amount of tax had already been paid previously on such lottery tickets, the exemption allowed as second sales was in order. The reply is not tenable as the previous dealer had only paid compounded amount on the basis of draws. Therefore exemption as second sale was not applicable in respect of subsequent sale of such lottery tickets. Legislature also perceived this and hence the proviso was introduced under Section 7-D of TNGST Act, to the effect that tax due under Section 3(2) on subsequent sale, shall be deemed to have been paid. The proviso does not grant exemption to subsequent sale of lottery tickets, in respect of which only compounded amount had been paid earlier inside the State. This clearly indicates that there shall be determination of taxable turnover and corresponding levy of tax, additional sales tax etc. The amount of tax shall be deemed to have been paid as per the proviso and in the absence of such provision in respect of additional sales tax, the same shall be payable by the assessee.

## 2.5. Non levy of interest for belated payment of tax

As per the TNGST Act and CST Act, if a dealer fails to pay tax due by the prescribed date, he shall be liable to pay interest at the prescribed rate.

In three[10] assessment circles, tax dues of Rs.1.82 crore relating to the years 1987-88, 1988-89, 1992-93 to 1995-96, 1997-98 and 1998-99, the assessments of which were finalised between March 1998 and March 2002, were paid belatedly by four dealers, the delay ranging from one month and 19 days to 53 months, for which interest amounting to Rs.1.08 crore though leviable, was not levied.

After this was pointed out in audit between December 1999 and October 2003, the Department levied interest of Rs.14.36 lakh in three cases of which an amount of Rs.12.57 lakh in one case was collected in July 2000. In another

[10] Avinashi Road, Coimbatore, Fast Track Assesment Circle-III, Chennai and Vandavasi.

case, the Department replied in October 2003 that the assessee had paid the tax due on clause 5-A[11] price within 30 days from the date of determination of such price and interest was not attracted. The reply is not tenable as it had been judicially held[12] that the tax on the amount paid over and above the minimum cane price[13] under clause 3 should be paid along with the monthly returns. The levy of interest on the belated payment of tax on clause 5-A price included in the supplementary returns was upheld. This decision was affirmed by the Madras High Court which held[14] that the levy of interest for the period between the date of filing the incorrect original return and the date on which the revised return was filed and tax was paid, was lawful.

The matter was reported to the Government during February/March 2004 and followed up with reminder in August 2004. Reply of the Government was awaited (September 2004).

## 2.6. Short levy of penalty

As per the CST Act, read with the TNGST Act, if the return filed by a dealer is found to be incorrect or incomplete, the assessing authority shall assess the dealer to his best of judgment. In addition, the assessing authority shall also levy penalty depending on the percentage of difference between tax assessed and tax paid as per returns.

In Brough Road Assessment Circle, Erode, while finalising in January 2000 and December 2001, the assessments of two dealers for the years 1994-95 and 1995-96, for short payment of tax, as against the amount of Rs.59.95 lakh leviable as penalty, an amount of Rs.40.27 lakh was levied. This resulted in short levy of penalty of Rs.19.68 lakh.

After this was pointed out in audit in November 2002, the Department revised the assessments in August 2003, levying penalty of Rs.19.68 lakh; the collection particulars of which was awaited.

The matter was reported to Government in December 2003. Government replied in April 2004 that as per the provisions introduced with effect from 1 April 1996, penalty was not leviable on additions made to turnover without any specific concealment, and on any turnover on which tax was paid at concessional rate, subject to the furnishing of any declarations but where such declaration forms could not be furnished and this provision was applicable in respect of cases finalised after the date of amendment. It was further mentioned therein that the proposals of the Enforcement Wing and adhoc additions were not on sound data and levy of penalty was not enforceable.

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11 Additional price notified by the Director of Sugar under clause 5-A of the Sugarcane (Control) Order, after the closure of each sugar season.

12 EID Parry (India) Ltd., Vs. Assistant Commissioner (CT)– 113 STC P.233 (TNTST).

13 Statutory minimum price payable by the sugar mills to the growers as per the Sugarcane (Control) Order.

14 Order of TNTST affirmed in respect of the same assessee in 126 STC P.399 (Madras).

The reply of the Government is not tenable as the amended provisions was applicable only in respect of transactions subsequent to the date of amendment, and the dealers also had not contested the additions made.

The matter was reported to the Government in June 2004 and followed up with reminder in August 2004. Further reply of the Government was awaited (September 2004).

# CHAPTER III

# LAND REVENUE

## 3.1 Results of Audit

Test check of records of departmental offices conducted during the period from April 2003 to March 2004 revealed non/short levy of local cess and local cess surcharge, non-levy of water cess and betterment contribution, non-levy of penalty/interest, short recovery of value/rent in respect of lands assigned, alienated or encroached etc., amounting to Rs.21.92 crore in 183 cases which broadly fall under the following categories.

**(In crore of rupees)**

| Sl. No. | Categories | No. of cases | Amount |
|---|---|---|---|
| 1 | Non/short levy of local cess and local cess surcharge. | 4 | 0.05 |
| 2 | Non-levy of water cess and betterment contribution | 2 | 0.06 |
| 3 | Non-levy of penalty/interest | 7 | 0.09 |
| 4 | Short recovery of value/rent in respect of lands assigned, alienated or encroached. | 36 | 11.21 |
| 5 | Others | 134 | 10.51 |
| | **Total** | **183** | **21.92** |

During the course of the year 2003-2004, the Department accepted the under assessments etc., amounting to Rs.51.97 lakh involving 67 cases out of which four cases amounting to Rs.1.30 lakh were pointed out during 2003-2004 and the rest in earlier years. Out of the above, an amount of Rs.14.58 lakh pertaining to 65 cases has been collected (June 2004).

A few illustrative cases involving a tax effect of Rs.3.45 crore are mentioned below:

## 3.2 Non raising of demand for value of land assigned

According to Board of Revenue Standing Order 15, Government land can be assigned to private persons on collection of prevailing market value of land as on the date of assignment.

In Katpadi Taluk, it was noticed in February 2003 that Government land was assigned in March 2001 to an engineering college with the condition that the prevailing market value of the land should be collected. However, no demand had been raised by the Department even after a lapse of three years. This resulted in non realisation of land cost amounting to Rs.2.18 crore.

After this was pointed out, the Department replied in February 2003 that the matter was pending for field inspection for fixing the current market value. The reply is not tenable since the rates were readily available in records of the Registration Department.

The matter was reported to the Government in July 2004 and followed up with reminder in August 2004; their reply had not been received (September 2004).

## 3.3 Inordinate delay in leasing out lands

According to Board of Revenue Standing Order 24A, Government lands can be granted on lease on temporary occupation for non-agricultural purposes and lease rent is leviable at seven *per cent* of prevailing market rate of land upto 3 June 1998 and one *per cent* thereafter. As per Tamil Nadu Panchayat Act, 1958 (TNP Act), local cess and local cess surcharge leviable on lease rent are leviable at the rates prescribed from time to time.

In Taluk office, Sriperumbudur, it was noticed in September 2003 that an educational institution trust had encroached 18.80 acres of land in addition to five acres of land already granted on lease by Government in May 1993. The High Court of Madras while disposing of the writ petition (filed in 1993) of the educational trust, ordered the Government in March 2001 to lease the land under dispute to the institution, for occupation within three months. However, the land was neither leased out nor the demand raised till date.

Thus, inordinate delay on the part of the Government to lease out the land as ordered by the court and failure to raise demand for lease rent in respect of 23.80 acres resulted in Government exchequer being deprived of Rs.89.55 lakh inclusive of Rs.12.79 lakh towards lease rent and Rs.76.76 lakh towards local cess and local cess surcharge.

The case was pointed out to the Department in November 2003 /Government in May 2004 and followed up with reminders in August 2004; the reply had not been received (September 2004).

## 3.4 Non levy of differential lease amount

Government by an order dated 13 March 1993 enhanced the lease rent for lands leased out for manufacture of salt from Rs.2 to Rs.60 per acre per annum. As per TNP Act, local cess and local cess surcharge at the rate prescribed on lease rent is also leviable.

In Tindivanam Taluk, it was noticed in August 2002 that 833.88 acres of land was leased between September 1989 and April 1994 to three[15] firms for manufacture of salt. The firms filed a writ petition filed in 1993 against the enhancement which was dismissed by High Court of Madras on 8 December 2000, thereby upholding the revised rate. Though the petitioners had paid 50 *per cent* of the enhanced lease rent before filing the writ petition, the demand for the remaining amount of lease rent and local cess and local cess surcharge was not raised by the Department even after a lapse of three years from the date of order of the High Court. This resulted in non-levy of differential lease amount and local cess and local cess surcharge on lease amount amounting to Rs.21.74 lakh.

After this was pointed out (September 2002) the Department replied (February 2004) that demands for Rs.8.08 lakh were raised in respect of two lessees and in respect of one lessee, action has been initiated under Revenue Recovery Act. Further report was awaited (September 2004).

The matter was reported to the Government in July 2004 and followed up with reminder in August 2004; the reply was awaited (September 2004).

## 3.5 Non levy of local cess and local cess surcharge

As per TNP Act, local cess and local cess surcharge are leviable on the land revenue payable in respect of any land in Panchayat area at the rate prescribed on lease rent. As per Tamil Nadu Land Revenue (Additional Surcharge) Act, 1995, additional surcharge at 13 *per cent* in lieu of local cess and local cess surcharge is leviable in Municipal Corporation areas. Any surcharge or tax can be exempted from levy only with the previous sanction of Government.

In Tambaram Taluk, it was noticed in January 2003 that Government lands measuring 9.78 acres in Thiruvanmiyur and Kottivakkam villages were leased out in May 2000 for 99 years to a private school. Though lease rent of rupees one lakh per annum was fixed, local cess and local cess surcharge or additional surcharge though leviable on the lease rent was not levied. This resulted in non-levy of local cess and local cess surcharge amounting to Rs.15.30 lakh during the period from 30 May 2000 to 29 May 2003.

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15 Kandadu Adi Dravidar Workers Co-op. Production and Sales Ltd., Marakkanam Adi Dravidar Salt Workers Co-op. Production and Sales Society Ltd. and Pakben & Company.

After this was pointed out (January/February 2003), the Government replied in March 2004 that as per TNP Act, 1994 Government was empowered to sanction exemption from payment of local cess and local cess surcharge and contended that local cess and local cess surcharge leviable was 'nil', as already stated in the lease deed. The reply is not tenable since the G.O. issued was silent about local cess and local cess surcharge and the same could not be exempted merely by stating it in the lease deed. Exemption can be allowed only with prior sanction of the Government.

The matter was again reported to the Department/Government (February 2004) and followed up with reminder in August 2004; their replies have not been received (September 2004).

## CHAPTER IV

## TAXES ON VEHICLES AND STATE EXCISE

### 4.1 Results of Audit

Test check of records of departmental offices conducted during the period from April 2003 to March 2004, revealed non/short collection of tax, fees, penalty etc., amounting to Rs.25.34 crore in 164 cases, which broadly fall under the following categories.

(in crore of rupees)

| Sl. No. | Categories | No. of cases | Amount |
|---|---|---|---|
| | **Taxes on vehicles** | | |
| 1 | Short/non collection of tax | 97 | 13.51 |
| 2 | Short/non collection of fees | 26 | 3.02 |
| 3 | Short/non collection of penalty | 5 | 0.03 |
| 4 | Others | 12 | 0.27 |
| | **Total** | **140** | **16.83** |
| | **State Excise** | | |
| 1 | Non/short levy of excise duty | 2 | 0.62 |
| 2 | Non/short collection of licence fees, privilege fees, etc. | 13 | 1.33 |
| 3 | Non/short collection of penalty/ interest | 5 | 0.26 |
| 4 | Other cases | 4 | 6.30 |
| | **Total** | **24** | **8.51** |
| | **Grand Total** | **164** | **25.34** |

During the course of the year 2003-2004, the Department accepted under assessments etc., amounting to Rs.14.70 lakh involving 30 cases of which six cases amounting to Rs.2.04 lakh were pointed out during 2003-2004 and the rest in earlier years. Out of the above an amount of Rs.7.14 lakh pertaining to 23 cases has been collected (June 2004).

A few illustrative cases involving a tax effect of Rs.4.98 crore are mentioned below:

# TAXES ON VEHICLES

## 4.2 Short levy due to mis-classification of light motor vehicle as maxi cab

Under Motor Vehicles Act, 1988, a 'maxi cab' has been defined as any motor vehicle constructed or adapted to carry more than six passengers, but not more than 12 passengers excluding the driver, for hire or reward. The tax leviable for the maxi cab was Rs.175 per seat per quarter upto 30 November 2001 and Rs.250 thereafter. Mini bus has been defined as a vehicle constructed or adapted to carry more than six passengers but not more than 25 passengers excluding the driver and the conductor. When such vehicle is used as contract carriage, the tax leviable thereon was Rs.2000 per seat per quarter upto 30 November 2001 and Rs.3000 thereafter. Inspecting Authority of the Department are required to inspect the motor vehicle before registration of such vehicles. As per return submitted by body builders to excise department, bodies for TATA 407 model chassis were fitted with seating capacity ranging between 17 and 19 excluding driver.

In twenty six[16] regions, it was noticed in February 2004 that 105 vehicles of TATA 407 model were registered between December 1999 and January 2003 as maxi cab with seating capacity of 12 excluding driver. However, the bodies of these vehicles were built so as to accommodate more than 12 (in some case even 17 or 19) excluding driver. In view of this, the vehicles should have been classified as mini bus and taxed accordingly. Taking into account the minimum number of seats as 13 for classifying it as minibus, the short realisation of tax in respect of these vehicles for the period between December 1999 and March 2003 worked out to Rs.2.51 crore.

After this was pointed out in February and March 2004 in the office of Transport Commissioner, Chennai, the Department stated in February 2004 that "Maxi Cab" permits were being issued for certain vehicles i.e. TATA 407 to meet the public demand for additional transport facilities in the tourist sector. It was further stated that even though the actual seating capacity was more than 12 excluding driver, the seating capacity was restricted to 12 excluding driver, as mentioned in RC Book and when such vehicles were found plying with more passengers, tax would be collected for the offence. The reply was not tenable since there is no provision in the Act/Rules to register a vehicle with seating capacity of more than 17 in the category of vehicles having seating capacity of 12 excluding driver. Also the penalty which is a discretionary power levied for violation, is for only those vehicles which are caught and does not cover the vehicles which are registered as

[16] Chennai, Coimbatore (South), Cuddalore, Dharmapuri, Dindigul, Karur, Madurai (South & North), Nilgiris, Ooty, Perambalur, Periyakulam, Pudukkottai, Ramanathapuram, Salem, Sivaganga, Srirangam, Thanjavur, Thiruchengodu, Thiruvannamalai, Tirunelveli, Tiruvallur, Tiruvarur, Vellore, Villupuram and Virudhunagar.

maxicab. In view of the above the Department may take appropriate action to register such vehicles according to its seating capacity and collect tax. Further reply was awaited (September 2004).

The matter was reported to the Government in May 2004 and followed up with reminder in August 2004; their reply was awaited (September 2004).

## 4.3 Delay in implementing Government Orders resulting in revenue foregone

By a notification issued in May 2002, Government of India enhanced the fee for issue of fresh/renewal/endorsement of driving licence in Form 7 (Laminated Card) from Rs.150 to Rs.200 per card with effect from 31 May 2002. However, the Government of Tamil Nadu, by an executive order issued in October 2002, made the enhanced fee applicable from 5 November 2002.

In the Office of the Transport Commissioner, Chennai, it was noticed in August 2003 that during the period from 1 June 2002 to 4 November 2002, fees for issue of fresh/renewal/endorsement of driving licence was collected at the pre-revised rate instead of at the enhanced rate. This resulted in loss of revenue of Rs.2.29 crore.

After this was pointed out, the Department replied in August 2003 that it was due to delayed notification and matter would be taken up with Government to obtain clarification. The fact remains that there was a delay of five months in publishing the notification by the State Government to charge fees at enhanced rates. The case was again pointed out to the Department in February 2004; their reply was awaited (September 2004).

The matter was reported to the Government in February 2004 and followed up with reminder in August 2004; their reply had not been received (September 2004).

## 4.4 Non/short levy of life time tax in respect of construction equipment vehicle

Government of India, Ministry of Surface Transport, New Delhi, had notified in July 2000 that construction equipment vehicles such as 'Excavator' should be treated as "Non-Transport Vehicles". Under the Tamil Nadu Motor Vehicles Taxation (TNMVT) Act, 1974, life time tax should be levied in respect of Non-Transport Vehicles as per the rate prescribed.

In six[17] Regional Transport Offices, it was noticed between March 2002 and August 2003 that in respect of 27 construction equipment vehicles registered

17 Chennai (West), Dharmapuri, Erode, Nagercoil, Periakulam and Sivaganga.

between August 2000 to July 2002, either quarterly tax was levied or life time tax was short levied. This resulted in short realisation of tax amounting to Rs.5.63 lakh.

After this was pointed out between March 2002 and October 2003 to the Department and to the Government in April/May 2004; the Government replied in July 2004 that construction equipment vehicles were covered under clause 6 B of Ist schedule to TNMVT Act and so life time tax was not leviable. The reply is not tenable since this clause includes only vehicles or trailer fitted with equipments like rigs, generators or compressors and do not speak about construction equipment vehicles like excavator loaders, cranes etc.

The Government was reminded in August 2004; the reply was awaited (September 2004).

## STATE EXCISE

### 4.5 Non collection of registration/renewal fees

Government by an order issued in October 2002 directed that renewal fees of Rs.2 lakh per annum per brand may be levied on old Indian Made Foreign Spirits (IMFS) and beer. This is in addition to registration fee of Rs.2 lakh for any new brands of IMFS[18] registered during the year. Government had clarified in February 2003 that the above orders were to be applicable only from the year 2003-2004.

In the Office of Excise Supervisory Officer, Chennai it was noticed in April 2003 that while registration fee for three new brands introduced by a distillery during the year 2002-2003 was collected, the same was not collected for six old IMFS Brands manufactured by the company based on Government's clarification. Since a G.O. could not be superseded by executive instructions issued in February 2003 through letters, the non-collection of renewal fee in respect of old brand was not in order. This resulted in non-realisation of fee of Rs.12 lakh.

The matter was again reported to the department/Government in June 2004 and followed up with reminder in August 2004; their replies were not received (September 2004).

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18 IMFS means spirits manufactured and compounded in India and made in colour and flavour to resemble gin, brandy, whisky or rum imported into India and includes "milk punch" and other liquors consisting of or containing spirits.

# CHAPTER V

# STAMP DUTY AND REGISTRATION FEES

## 5.1 Results of Audit

Test check of records of departmental offices conducted during the period from April 2003 to March 2004 revealed under valuation of property, misclassification of documents etc., amounting to Rs.223.69 crore in 484 cases which broadly fall under the following categories.

**(In crore of rupees)**

| Sl.No. | Categories | No. of cases | Amount |
|---|---|---|---|
| 1 | Under valuation of property | 160 | 6.12 |
| 2 | Misclassification of documents | 93 | 1.06 |
| 3 | Others | 230 | 11.60 |
| 4 | Review: **Stamp Duty** | 1 | 204.91 |
| **Total** | | **484** | **223.69** |

During the course of the year 2003-2004, the Department accepted and collected under assessments of Rs.45.67 lakh in 81 cases out of which Rs.9.34 lakh pertaining to a case was pointed out during the year and the rest in earlier years.

A review on **Stamp Duty** and few illustrative cases involving a tax effect of Rs.205.55 crore are mentioned below:

## 5.2 Review on Stamp Duty

### *Highlights*

**Comparison of stamp duty realised by sale of stamp papers used in the registration of the documents between 1998-99 to 2002-03 with the sale of non judicial stamp papers booked in the treasury accounts revealed that the value of stamp papers shown as utilised in registration was more by Rs.189.68 crore than the value of stamp papers sold.**

*(Paragraph 5.2.7)*

**The accounts of 14 Licensed Stamp vendors revealed that there was discrepancy to the tune of Rs.6.83 crore in the sale account of stamp papers as reported to the District Registrars by the vendors with the value of stamp papers purchased from the treasuries.**

*(Paragraph 5.2.8)*

**There was excess utilisation of insurance stamps by nationalised insurance companies to the tune of Rs.8.40 crore as against the sales made by the concerned Department during the years from 1998-1999 to 2001-2002.**

*(Paragraph 5.2.9)*

### *5.2.1 Introduction*

The Indian Stamp Act, 1899, and Rules made thereunder as amended from time to time regulate the levy of stamp duty and registration fees on the instruments registered by the Registration Department. The duties and responsibilities of the Registration department confine to registration of instruments presented for registration and collection of stamp duty and registration fees under the Act. The Department is also empowered under the provisions of Tamil Nadu Stamp Rules, to appoint licensed stamp vendors.

The Superintendent of Stamps of the Treasuries and Accounts Department administers the receipts of stamps from the Central Stamp Depot, India Security Printing Press (ISP), Nasik and Security Printing Press (SPP), Hyderabad and their supply to District Treasuries (Huzur Treasuries) and sub-treasuries. The sale of stamps to the general public is effected either directly through treasuries/sub-treasuries or through the licensed stamp vendors.

### 5.2.2 Organisational set up

The Inspector General of Registration(IGR) is the head of the Department who is assisted by nine Deputy Inspector General of Registration. The state has been divided into 50 registration districts headed by the Assistant Inspector General of Registration (AIGR)/District Registrars (DRs). DRs and the Joint Sub-Registrars (JSRs)/Sub-Registrars (SRs) are responsible for the levy and collection of stamp duty and registration fees under the provisions of the Act.

The General Stamp Office headed by the Superintendent of Stamps is functioning under the overall control of the Commissioner of Treasuries and Accounts (CTA). He is assisted by the Assistant Superintendent of Stamps. The District Treasury Officer (DTO), Chennai was authorised by the Government to obtain stamps from central stamps depot ISP, Nasik and SPP, Hyderabad, by personal delivery with effect from 1 October 1998. There are six[19] nodal points (District Treasuries) in the State, which obtain stamps from DTO for further distribution to treasuries/sub-treasuries.

### 5.2.3 Scope of Audit

To examine the efficiency in the overall administration of the Department particularly with reference to sale and usage of stamp papers in the State, test check of records of 113 out of 181 SRs and 10 out of 29 treasuries spread over nine revenue districts coming under the control of 16 District Registrars covering the period from 1998-99 to 2002-03 was made between February 2004 and May 2004.

### 5.2.4 Audit objectives

The review was conducted with a view to

- check the assessment of requirement, indenting, accountal of stock, sale, accountal of sale proceeds etc. which would enable fraud
- ascertain whether action was taken to ensure adequate supply of stamp to/from various treasuries
- ascertain leakage of revenue under stamp duty and
- analyse utilisation of stamps in the insurance sector.

### 5.2.5 Variations between budget estimates and actuals

The budget estimates vis-à-vis the actual receipts under the head sale of stamps (Non Judicial) for the years 1998-99 to 2002-2003 are indicated below:

[19] Chennai, , Coimbatore, Madurai , Tiruchirappalli, Tirunelveli and Vellore.

(In crore of rupees)

| Year | Budget Estimate | Actuals | Variations Excess (+) Shortfall (-) | Percentage of Variations |
|---|---|---|---|---|
| 1998-99 | 548.64 | 600.15 | (+) 51.51 | (+) 9.38 |
| 1999-00 | 623.33 | 691.19 | (+) 67.86 | (+) 10.87 |
| 2000-01 | 699.89 | 741.35 | (+) 41.46 | (+) 5.92 |
| 2001-02 | 699.95 | 866.98 | (+) 167.03 | (+) 23.86 |
| 2002-03 | 808.45 | 1083.28 | (+) 274.83 | (+) 133.99 |

The Government replied in May 2004 that the anticipated receipts were based on the previous years actual sales. Revised estimates were prepared based on the actuals received for the first four months. Based on these factors the budget estimates for the next year is prepared.

In the years 2001-2002 and 2002-2003 the budget estimate was less than the actuals of the previous year though the actuals were showing increasing trend. This indicated that the budget estimates were not prepared on realistic and scientific basis.

### *5.2.6 Incorrect assessment of placing of indents of non-judicial stamp papers*

Indents for the supply of non-judicial stamp papers are placed by the Assistant Superintendent of Stamps, Chennai with ISP, Nasik and SPP, Hyderabad based on the quarterly indents received from all the Treasury Officers in the State.

The indents placed and supplies received in respect of non-judicial stamp papers with regard to the opening balance and sales made during the period from 1998-99 to 2002-03 were as detailed below:

(In crore of rupees)

| Year | Indents placed during the year | Opening Balance | Supply received from ISP/ SPP | Total Col. 3+4 | Sales made by trea-suries* | Closing Balance Col. 5-6 |
|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 1998-99 | 433.21 | 2,047.34 | 265.89 | 2,313.23 | 615.97 | 1,697.26 |
| 1999-00 | 989.27 | 1,697.26 | 62.99 | 1,760.25 | 707.17 | 1,053.08 |
| 2000-01 | 2,691.22 | 1,053.08 | 1,477.80 | 2,530.88 | 745.79 | 1,785.09 |
| 2001-02 | 1,762.49 | 1,785.09 | 1,133.99 | 2,919.08 | 879.27 | 2,039.81 |
| 2002-03 | 6,132.10 | 2,039.81 | 688.96 | 2,728.77 | 1,046.68 | 1,682.09 |

* Sales made by treasuries means sale of non-judicial stamps which includes stamp paper, share transfer stamps, foreign bills stamps, insurance stamps, etc.

The Assistant Superintendent of Stamps stated in May 2004, that the Department was left with no alternative except to accept the supplies made and the backlog of the supply of stamps were carried over in the subsequent indent placed with ISP, Nasik. Further, the Commissioner of Treasuries and Accounts had also observed in March 2002 that the indents prepared and placed by the Assistant Superintendent of Stamps were inadequate and also not properly assessed based on the actual requirements of the treasuries. This is not correct since as seen from the above details there was a huge closing balance and the Department was not in short supply at any point of time which is evident from the sales figures of the treasuries.

Thus, there was a failure on the part of District Treasury Officer, Chennai to prepare the indents based on the closing stock of the previous year as well as on an analysis of the kind of sales of the past years.

### *5.2.7 Non-reconciliation of stamp papers.*

The Registration Department levies stamp duty as per the Schedule I of the Indian Stamp Act, 1899, on all the instruments presented for registration. The face value of the non-judicial stamp papers on which the instruments are written bear the stamp duty leviable on the instruments. Any deficit stamp duty is also collected by the registration department in cash. The non-judicial stamp papers required by the public for execution of documents are sold by the treasuries and also through the licensed stamp vendors.

Comparison of stamp duty realised by sale of stamp papers used in the registration of the documents between 1998-99 and 2002-03 in the DR's/JSR's/SR's offices with the sale value of non judicial stamp papers booked in the treasury accounts revealed that the value of stamp papers shown as utilised in registration was more than the value of stamp papers sold by the treasuries as detailed below:

**(In crore of rupees)**

| Year | Sale of NJ stamp as per treasury accounts | Stamp duty collected through documents registered | Difference |
|---|---|---|---|
| 1998-99 | 615.97 | 596.35 | (-) 19.62 |
| 1999-00 | 707.17 | 777.94 | 70.77 |
| 2000-01 | 745.79 | 727.00 | (-) 18.79 |
| 2001-02 | 879.27 | 1,020.95 | 141.68 |
| 2002-03 | 1,046.68 | 1,062.32 | 15.64 |
| **Total** | **3,994.88** | **4,184.56** | **189.68** |

The cumulative excess for the entire state during the years from 1998-99 to 2002-03 was Rs.189.68 crore. The above variation remained unreconciled by the departments concerned, even in respect of earlier years as well.

There was a wide gap in 1999-2000 and 2001-2002 between the stamp papers sold and documents registered. The excess indicated, besides the stock of

stamp papers pertaining to earlier years, utilisation of stamp papers not sold through the treasuries presumably by way of fake stamp papers. There was no provision in the Tamil Nadu Stamp Rules restricting the use of stamp papers to a particular area and also there was no time limit within which the stamps purchased could be used.

After this was pointed out, the IGR replied in September 2004 that the excess stamp papers procured by the stamp vendors could not be traced out by the Department and further stated that the registered documents cannot be traced back from the vendors as these were returned to the parties concerned after registration.

The reply is not tenable since the list/copies of documents registered alongwith the name of the stamp vendors who sold the stamp papers to the persons who had registered the documents were available with the Department. The same could have been utilised for cross verification.

### *5.2.8 Checking of Licensed Stamp Vendors accounts*

As per Tamil Nadu Stamp Rules, DRs are empowered to issue license to vendors for the sale of stamps. Licensed stamp vendors (LSV) shall sell only such nature, category and denominations of stamps and within such geographical limits as are indicated in their licenses. The IGR through executive orders dated 7 April 1988 and 16 July 1994 directed all LSVs to submit weekly stock position to the concerned SRs. Further they are to submit their sale account twice every year to the concerned DR alongwith the necessary document in support of their sales.

#### *Excess sales of stamp paper against purchases by licensed vendors*

In four[20] DRs and the relevant SRs, a test check by audit of the value of stamp papers purchased by 11 LSVs from the designated treasuries with that of their sale account revealed that there was excess sale of stamp papers over and above the quantity purchased alongwith the opening balance. This had resulted in excess sale of stamps by LSVs to the tune of Rs.6.70 crore between 1998-99 and 2001-2002 disproportionate to the purchases made by them during the relevant period as detailed below:

[20] Chennai (Central), Chennai (North), Coimbatore and Vellore.

(In lakh of rupees)

| Sl. No | Name of the vendor | 1998-99 | 1999-00 | 2000-01 | 2001-02 | Total |
|---|---|---|---|---|---|---|
| 1 | P.Saraswathy | 20.95 | 74.68 | 173.67 | 149.40 | 418.70 |
| 2 | T.Shanmugam | 1.58 | 3.01 | 1.10 | ---- | 5.69 |
| 3 | V.Selvanayagam | 2.13 | 3.29 | ---- | ---- | 5.42 |
| 4 | G.Manoharan | 10.74 | 17.75 | ---- | ---- | 28.49 |
| 5 | M.Andalamma | 26.66 | 21.10 | 20.50 | ---- | 68.26 |
| 6 | M.P.Kumar | 10.51 | 6.19 | 4.99 | ---- | 21.69 |
| 7 | P.Sundaravalli | --- | ---- | ---- | 1.38 | 1.38 |
| 8 | P.D.Murthy | 0.91 | 0.20 | ---- | ---- | 1.11 |
| 9 | E.P.Subramani | 0.07 | ---- | ---- | ---- | 0.07 |
| 10 | P.Mylsami | 36.19 | 39.64 | ---- | ---- | 75.83 |
| 11 | K.Rathinam | 30.05 | 13.29 | ---- | ---- | 43.34 |
| | Total | 139.79 | 179.15 | 200.26 | 150.78 | 669.98 |

The sale of excess stamps over and above the quantity purchased also include cases wherein the LSVs sold stamp papers of the same value to two different purchasers issued against the same serial number and the documents bearing such serial number of stamp papers were registered. This proves that one of the stamp paper was not purchased from the treasury.

After this was pointed out, the Department cancelled in June 2004 the licenses in respect of four LSVs. It has further issued a circular in July 2004 to look into such cases and to issue show cause notice wherever necessary.

- Further, in four[21] SRs in respect of three LSVs, it was noticed that during the year 1998-99 and 2002-03, stamp papers with serial numbers assigned for lower denominations were registered for much higher denomination. This had resulted in excess sale of stamp papers to the tune of Rs.13.29 lakh in various denominations which was not in accordance with purchases made by them from the treasuries.

After this was pointed out, the DRs replied in June 2004 that in the absence of codal provisions or executive instructions, cross verification of vendor's sales account with treasury records could not be done by the registering officers.

As there was no mechanism to reconcile the sale account rendered by the LSVs to DRs (under Registration Department) with that of the actual purchases made from the sub-treasuries, (under Revenue Department) usage of unauthorised stamp papers could not be detected.

[21] Ambattur, Konnur, Sembiam and Vaniyambadi.

### *5.2.9 Utilisation of insurance stamps by Nationalised Insurance Companies*

According to the provisions contained in the Schedule I of the Indian Stamp Act, all the instruments under the insurance sector have to be levied with stamp duty at the rate specified in the Act.

It was noticed during audit, based on the information collected from the Nationalised Insurance Companies (NIC) in the State, that during the period from 1998-1999 to 2001-2002, utilisation of stamps on all the instruments under insurance sector with that of the sales figures obtained from the Assistant Superintendent of Stamps was in excess to the tune of Rs.8.40 crore as detailed below:

**(In crore of rupees)**

| Year | Sales * | Utilisation of stamps as given by the NICs | Excess utilisation. |
|---|---|---|---|
| 1998-1999 | 2.04 | 2.75** | 0.71 |
| 1999-2000 | 2.94 | 3.46 | 0.52 |
| 2000-2001 | 1.85 | 4.78 | 2.93 |
| 2001-2002 | 2.95 | 7.19 | 4.24 |
| **Total** | **9.78** | **18.18** | **8.40** |

* The sales figures were computed based on the difference between the opening stock + receipts – closing stock

**Utilisation is the aggregate of stamps utilised by three out of five National Insurance Companies.

It was also intimated by the NICs that the insurance stamps were procured from the sub-treasuries/LSVs from Tamil Nadu only. It was however, observed that Smt.M. Andalammal, a LSV coming under the jurisdiction of DR, Chennai (North) was found selling fake insurance stamps worth Rs.1.17 lakh in January 2001 by police department attached to New Delhi. Her licence was subsequently cancelled. DR stated that the periodical verification/checking of stock/sale accounts relating to insurance stamps was not in practice, even though insurance stamps also come under the category of non-judicial stamps. In spite of the Department being aware as early as in 2001 that fake insurance stamps were being utilised by the vendors, no system was evolved to check the sale of such stamps by vendors spread over the state with that of the utilisation of the stamps by the NICs concerned, till date.

### *5.2.10 Internal audit*

An internal audit wing is functioning in the Registration Department to conduct internal audit of the accounts of the office of the SRs periodically. The accounts of the Registration Branch is audited once in a month and that of SRs once in three months. The internal audit of the Department had been completed upto 2002-2003.

Though the IGR had issued orders from time to time on various audit checks to be exercised by the internal audit wing, no action was taken to issue specific order entrusting the responsibility of checking the genuineness of stamp papers used for registration of documents.

### *5.2.11 Conclusion*

The review of the sale and utilisation of stamp papers in the State revealed that

- there is no proper system for reconciling the actual sale of stamp papers with that of the value of stamp papers utilised for documents registered and
- there is no provision in the Rules for DRs to reconcile sale account of vendors with that of the purchases made in the treasuries so as to ensure the genuineness of stamp papers used.

### *5.2.12 Recommendations*

The Government may consider the following

- forecasting and indenting of stamps needs to be streamlined by keeping in view the closing stock of previous years and the trend of sales of past years.
- DRs must reconcile sale account of vendors with that of the purchases made in the treasuries so as to ensure the genuineness of stamp used.
- specify the period upto which the stamp papers once sold will be valid and also the territorial jurisdiction within which they would be used.
- investigate the issue of excess utilisation of insurance stamps and introduce a system for periodical reconciliation of sale of insurance stamps with its utilisation.

The case was reported to Government in June 2004 and followed up with reminder in August 2004; their reply was awaited (September 2004).

## 5.3 Loss of revenue due to collection being barred by limitation of time

Under the Indian Stamp Act, where any instrument relating to the property in Tamil Nadu is registered in any part of India, other than the state of Tamil Nadu, it shall be liable to be charged with difference of stamp duty, on receipt of copy of such instrument in the State. No action shall be taken after a period of four years from the date of receipt of the copy of such instrument in the state of Tamil Nadu under the Registration Act, 1908.

In Sub Registry, Kollancode, it was noticed that 653 documents were registered between November 1983 and January 1994 in the State of Kerala. Though the copies of the documents were received in this State between April 1999 and November 1999 and referred to Collector, no effective action to collect the differential stamp duty of Rs.29.45 lakh was taken.

After this was pointed out, the Department replied in December 2003 that an amount of Rs.0.77 lakh pertaining to 21 cases had been collected. However, the possibility of collection of balance amount was remote since action is barred by law of limitation.

Thus, the failure of the Department to take effective action, to collect the deficit stamp duty within the prescribed time, resulted in Government exchequer being deprived of the revenue of Rs.28.68 lakh. The case was again referred to the Department in March 2004; their reply has not been received so far (September 2004).

The matter was reported to Government in March 2004 and followed up with reminder in August 2004; their reply has not been received (September 2004).

## 5.4 Incorrect exemption of stamp duty

Under the Indian Stamp Act, the Government may, by rule or order published in official gazette, reduce or remit the duties with which any instruments are chargeable.

Government by an order issued in March 2000, exempted payment of stamp duty in respect of instrument executed by SIDCO[22], SIPCOT[23], TACID[24] and other industrial estates formed with Government assistance relating to sale, lease and lease-cum-sale of industrial plots/shed. However, the above exemption was applicable only for such blocks which were industrially backward or most backward, as notified in G.O.Ms.No.41 dated 18 March 1996.

Further, the Government in their order dated 30 September 2003, decided not to extend remission of Stamp duty and Registration Fees beyond 24 January 2000, in respect of places other than backward and most backward blocks.

In SR, Walaja Nagar and Melur, it was noticed (December 2002/ March 2003), that a sale deed and three lease deeds were executed between March and December 2000 by SIPCOT, through which industrial plots were sold/leased out to private entrepreneurs. Though the areas viz 'Ranipet' and

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22 SIDCO – Small Industries Development Corporation Limited.

23 SIPCOT – State Industries Promotion Corporation of Tamil Nadu Limited.

24 TACID - Tamil Nadu Corporation for Industrial Infrastructure Development Limited.

'Meelavittan Village' in which the above industrial plots were situated were not covered by the above said order, exemption was granted. This resulted in non levy of stamp duty of Rs.15.63 lakh.

After this was pointed out, the Department replied in August and December 2003 that in respect of Ranipet, Government by a notification dated 27 December 1982 had granted exemption from April 1982, to lease conveyance of industrial plots in grown centers at Ranipet, Hosur etc., and in the case of Meelavittan Village of Tuticorin, it was stated that Government by an order issued in July 2000, included Tuticorin as most backward area and hence the exemption granted was in order.

The reply is not tenable, since in respect of Ranipet the lease cum sale agreement deed was executed on 3 December 1981, which was prior to the effective date of the notification (1 April 1982) and in respect of Turicorin, the said Government order was only for the purpose of grant of incentives/ subsidies in capital investments, and not for remission of Stamp duty.

The matter was reported to the Government in April 2004 and followed up with reminder in August 2004; their reply has not been received (September 2004).

## 5.5 Incorrect determination of separated shares

As per Indian Stamp Act, instrument of partition is defined as any instrument whereby co-owners of any property divide or agree to divide such property in severalty.

In SR, Usilampatti, a partition deed was executed in March 2001 among family members and property valued at Rs.5.21 crore was divided into six schedules (A to F). Stamp duty was collected on the combined value of the properties mentioned in schedules B to F considering these as separated shares. On further scrutiny, it was found that the schedule A property worth Rs.5.15 crore was agreed by the four sons to be divided equally and enjoyed independently in four equal shares from the date of execution of the document. However, the separated share of this schedule was not included for levy of stamp duty and registration fees. The incorrect determination of separated share of property had resulted in short levy of stamp duty and registration fees of Rs.11.37 lakh.

After this was pointed out in June 2003, the Department accepted in May 2004 the audit observation and stated that action had been initiated to recover the deficit stamp duty and registration fees. Further report was awaited (September 2004).

The matter was reported to Government in April 2004 and followed up with reminder in August 2004; their reply had not been received (September 2004).

## 5.6 Short levy of stamp duty and registration fee due to misclassification of a document

According to Indian Stamp Act, "conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred. A conveyance is a transfer for consideration to another person who has no pre-existing right in the property to any extent.

In DR, Thanjavur, it was noticed in February 2003 that an extent of 2.54 acres of land with building was jointly purchased by two parties in 1986. The first party consisted of three persons and the second party consisted of only one person with each party having 50 *per cent* of share/right in the property. Subsequently, through a partition deed registered in 1994, one person of the first party renounced his share in the property in favour of the other two persons of first party and the property having been meted out with specific share and right of ownership. Due to this, parties become absolute owners to their share (50 *per cent*) of the property independently and have no right over the other party's share. Through another document registered in March 2002, the second party renounced his share of 50 *per* cent of said property in favour of first party for a consideration of Rs.15 lakh. The document was classified as "Partition Deed" and stamp duty was collected at four *per cent* on the consideration amount.

However, it was seen that the first party had no pre-existing right in the share of property held by second party and vice versa. As the persons involved (first party and second party) did not belong to Hindu undivided family, there was no question of money in the common hotchpot[25]. Hence it cannot be termed as partition.

Further, the second party also received a consideration of Rs.15 lakh. In view of the above reasons, the document though styled as 'partition deed' had to be classified as "conveyance deed" and duty was chargeable at 12 *per cent* of the market value of the property under Article 23 of the Indian Stamp Act. The incorrect classification of document had resulted in short-levy of stamp duty and registration fee amounting to Rs.7.44 lakh.

After this was pointed out, the IGR accepted in October 2003 the audit observation and stated that action would be initiated to recover the deficit stamp duty.

The case was reported to Government in February/April 2004 and followed up with reminder in August 2004; their reply has not been received (September 2004).

[25] Common hotchpot – Earnings of an Hindu Undivided Family.

# CHAPTER VI

# OTHER TAX RECEIPTS

## 6.1 Results of Audit

Test check of records of departmental offices conducted during the period from April 2003 to March 2004 revealed urban land tax collected and not remitted into Government Account, non levy/collection of inspection fees, testing fees, interest, fine and penalty, non levy/collection of electricity duty, electricity tax, additional tax, non renewal and collection of licence fees amounting to Rs.30.45 crore in 22 cases, which broadly fall under the following categories.

**(In crore of rupees)**

| Sl. No. | Categories | No. of cases | Amount |
|---|---|---|---|
| | **Urban Land Tax** | | |
| 1 | Non remittance of urban land tax into Government account | 2 | 0.07 |
| | **Total** | **2** | **0.07** |
| | **Electricity Duty** | | |
| 1 | Non levy/collection of inspection fees, testing fees, fine and penalty | 9 | 0.07 |
| 2 | Non levy/collection of electricity duty, electricity tax and additional tax | 7 | 7.07 |
| 3 | Non renewal/collection of licence fees under lift act, 1997 | 3 | 0.02 |
| 4 | Non collection of interest for belated payment of electricity tax. | 1 | 23.22 |
| | **Total** | **20** | **30.38** |
| | **Grand Total** | **22** | **30.45** |

During the year 2003-2004, the concerned departments accepted under assessments of Rs.98.65 lakh in 15 cases. Out of the above an amount of Rs.2.24 lakh in respect of eight cases has been collected.

A few illustrative cases involving a financial effect of Rs.30.47 crore are mentioned below:

# URBAN LAND TAX

## 6.2 Omission to assess urban lands

Under the Tamil Nadu Urban Land Tax Act, 1966, as amended from time to time, urban lands are assessable to urban land tax from 1 July 1991 on the basis of market value of lands, as on 1 July 1981. In such cases, where the revised urban land tax leviable on the basis of market value as on July 1981 exceeds five times the tax already levied, the revised urban land tax shall be limited to five times of the tax already levied.

In five assessment divisions, urban lands measuring 75,32,677 sq.ft. belonging to 78 assessees were either not assessed to tax or assessment was not revised with effect from 1 July 1991 onwards and thereby demand of tax was not raised by department. This had resulted in non levy of urban land tax amounting to Rs.90.33 lakh as detailed below:

**(In lakh of rupees)**

| Sl. No. | Place | No. of assessees | Area (in sq.ft) | Period for which tax not assessed | Tax effect |
|---|---|---|---|---|---|
| 1 | Poonamallee | 2 | 35,01,664 | 1 July 1991 to 30 June 2003. | 39.15 |
| 2 | Mylapore | 1 | 1,23,258 | 1 July 1991 to 30 June 2004. | 18.69 |
| 3 | Tambaram | 32 | 14,90,572 | Between 1 July 1991 and 30 June 2003. | 9.62 |
| 4 | Ambattur | 26 | 13,38,661 | Between 1 July 1991 and 30 June 2003. | 11.41 |
| | | 6 | 5,62,362 | 1 July 1991 to 30 June 2003. | 5.90 |
| 5 | Madhavaram and Tambaram | 11 | 5,16,160 | Between 1 July 1991 and 30 June 2003. | 5.56 |
| | **Total** | **78** | **75,32,677** | | **90.33** |

After this was pointed out, the Department stated between April 2002 and March 2004, that the lands had since been assessed to tax and a demand for Rs.90.33 lakh was raised and Rs.3.96 lakh realised in December 2003. Report on further recovery was awaited (September 2004).

The matter was reported further between January 2004 and April 2004 to the Government and followed up with reminder in August 2004; their reply has not been received (September 2004).

## ELECTRICITY DUTY

### 6.3 Non collection of interest for belated payment of electricity tax

As per provisions of the Tamil Nadu Electricity (Taxation on Consumption) (TNEA) Act, 1962 and Rules made thereunder, every licensee shall collect from the consumer and pay to the Government, the electricity tax in the manner prescribed. The tax should be paid within a period of 60 days from the last day of the month, for which electricity tax is levied. For belated payment, interest at the rate of 12 *per cent* per annum shall be recovered.

Tamil Nadu Electricity Board (TNEB) collected Rs.955.54 crore from consumers towards electricity tax during the period from 1999-2000 to 2002-2003, which was either remitted late or the Government adjusted the same out of financial assistance granted by way of tariff compensation or conversion into equity share capital. But the interest of Rs.23.22 crore for belated payment or adjustment was not demanded from TNEB.

After this was pointed out in October 2003 the Government replied in March 2004 that the possibility of adjusting the interest from the subsidy payment was under consideration.

The matter was again reported to the Department and Government in April 2004 and followed up with reminder in August 2004; their reply has not been received (September 2004).

### 6.4 Non levy of electricity duty and tax

As per the Tamil Nadu Electricity Duty Act, 1939, every licensee in the State of Tamil Nadu shall pay every month a duty calculated at the rate of three paise per unit of energy on and in respect of all sales/consumption of energy effected by the licensee during the previous month, except sales of energy to Government of India or Railways which are exempted from levy of electricity duty. As per the Act ibid, 'licensee' includes any person including a company or local authority who has obtained license from the State Government under the Indian Electricity Act, 1910 to supply energy. Electricity tax, a levy on consumption of electrical energy, is collected from the consumers under the TNEA at the rate of 11 *per cent* on the price of the energy consumed.

Government by notifications issued in March 1977 and July 1984 exempted units which generate electricity by using Diesel Oil and Low Sulphur Heavy

Stock (LSHS) from payment of electricity tax. However these notifications do not include units which generate electricity by using natural gas.

Government by an order issued in December 1999 granted permission to M/s. Southern Energy Development Corporation (M/s. SEDC) for generating electrical energy using natural gas. As per the conditions attached there to, the Corporation has to pay any statutory levy like electricity tax/duty imposed by the State/Central Government.

In the Office of Chief Electrical Inspector, it was noticed in July and December 2003 that in respect of M/s.SEDC for the period from April 2000 to March 2003 for consumption of electrical energy, both by itself or through its group companies, electricity duty and tax though leviable was not levied. The omission resulted in non levy of electricity duty and tax of Rs.6.35 crore.

After this was pointed out to the Department/Government in July and October 2003 the Government stated in November 2003 all exemption from payment of electricity tax were to be scrapped. Further action was awaited (September 2004).

The case was again reported to the Government in August 2004; their reply was not received (September 2004).

# CHAPTER VII

# NON TAX RECEIPTS

# MINES AND MINERALS

## 7.1 Results of Audit

Test check of records of departmental offices conducted during the period from April 2003 to March 2004, revealed non/short levy of royalty, dead rent and seignorage fee, etc., amounting to Rs.538.06 crore in 78 cases, which broadly fall under the following categories.

**(In crore of rupees)**

| Sl.No. | Categories | No. of cases | Amount |
|---|---|---|---|
| 1 | Non/short levy of royalty, dead rent and seignorage fee | 43 | 1.97 |
| 2 | Others | 34 | 3.20 |
| 3 | Review on **Receipts under Mines and Minerals** | 1 | 532.89 |
| **Total** | | **78** | **538.06** |

During the course of the year 2003-2004, the Department accepted and collected under assessments etc., amounting to Rs.3.59 lakh in 15 cases out of which Rs.0.94 lakh involving two cases were pointed out during the year and the rest in earlier years.

A review **Receipts under Mines and Minerals** involving a financial effect of Rs.532.89 crore is mentioned below:

## 7.2 Review on Receipts under Mines and Minerals

### *Highlights:*

**Due to non-fixing of lease amount by Government in respect of 118 lessees even after four years from the date of proposals sent by the Director, lease amount of Rs.395.17 crore for the years 1996-1997 to 2003-2004 was not realised.**

*(Paragraph 7.2.7. )*

**Failure of the Department to evict the lessee and to raise double the rate of lease amount resulted in non-realisation of lease amount of Rs.126.62 crore.**

*(Paragraph 7.2.7 )*

**Registration of lease deed in respect of two companies were made at nominal rates instead of as per the provisions of the Act resulted in short recovery of Stamp Duty and Registration Fees of Rs.10.50 crore.**

*(Paragraph 7.2.10 )*

### *7.2.1 Introduction*

The principal major minerals found in Tamil Nadu are lignite, limestone, magnesite, quartz, feldspar and bauxite, etc. Minor minerals like black and grey granite, river sand and rough stones, etc are also available in the State. Also oil and natural gas have been extracted in the coastal belt of the State.

Extraction of major minerals is governed by the Mines and Minerals (Regulation and Development) Act, (Act) 1957 and Mineral Concession Rules, 1960 (MC Rules) made thereunder. Under the Act, State Government is empowered to make rules to regulate the grant of mining lease in respect of minor minerals. Accordingly, the Tamil Nadu Minor Minerals Concession Rules, 1959 (TNMMC Rules) were framed. Prospecting or mining operations can be undertaken only with a licence or mining lease granted under the TNMMC Rules. The holder of the mining lease shall pay royalty/segniorage fee at the rates prescribed as the case may be, in respect of minerals removed by him from the leased area. Wherever royalty/seigniorage fee in a year is less than dead rent, the dead rent is payable in lieu of royalty.

Receipts from mines and minerals consist of application fee, licence fee, royalty and dead rent, etc. Stamp duty and registration fee are also leviable on mining lease deeds under the Indian Stamp Act, 1899, and the Indian Registration Act, 1908.

### *7.2.2 Organisational set up*

The Commissioner of Geology and Mining (CGM) is the head of the Department. The District Collectors (DC) are authorised under the Rules to grant mining licences who are assisted by Deputy Directors (DD) and Assistant Directors (AD) in performing their duties. There are 27 District offices, a gem collection centre at Karur and a geo-technical cell at Coonoor. In addition, certain statutory functions such as issue of temporary permits, detection of illicit mining and taking action thereon are exercised by Tahsildars attached to taluk offices.

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The CGM has been vested with the powers for the grant of mineral concessions in respect of major minerals occurring in ryotwari (patta) lands. In respect of Government lands, the State Government is vested with the powers for the grant of quarry lease of minerals. In respect of exportable granites, the powers for grant of quarry lease is also vested with the Government irrespective of the classification of lands applied for lease. The DCs are empowered to grant leases for other minor minerals irrespective of the classification of lands.

### *7.2.3 Scope of audit*

To examine the efficiency in the overall administration of the Department particularly with reference to fixation of lease rent and its collection, records of 13[26] out of 27 District Offices and the CGM were test checked for period from 1998-99 to 2002-03 from December 2003 to June 2004.

### *7.2.4 Audit Objectives*

A review was conducted to

- examine proper enforcement and administration of various provisions of the Act/Rules for levy and collection of mining dues;
- examine the efficiency of administration of the Act with particular reference to issue of mining lease, fixing of lease amount and its collection, charging of royalty/seigniorage fee, etc under the Act.

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26 Coimbatore, Cuddalore, Dharmapuri, Kanyakumari, Nagapattinam, Namakkal, Perambalur, Salem, Thiruvallur, Thoothukudi, Tirunelveli, Trichy and Villupuram.

### 7.2.5 *Trend of revenue*

The position of budget estimates vis-à-vis revenue realised from mines and minerals during the period from 1998-99 to 2002-03 were as under:

**(In crore of rupees)**

| Year | Budget Estimates | Actuals | Percentage of variations |
|---|---|---|---|
| 1998-1999 | 104.90 | 101.04 | (-) 3.68 |
| 1999-2000 | 115.68 | 113.25 | (-) 2.10 |
| 2000-2001 | 217.93 | 395.33 | (+) 81.75 |
| 2001-2002 | 232.00 | 160.40 | (-) 30.86 |
| 2002-2003 | 155.43 | 181.09 | (+) 16.51 |

The reasons for wide variation during 2000-01 and 2001-02 was due to receipt of royalty in advance of Rs.250 crore from Neyveli Lignite Corporation (NLC) and adjustment of the same during the subsequent years.

### 7.2.6 *Position of arrears*

Position of arrears and assessment pending under revenue recovery Act/court cases are as detailed below:

**(In crore of rupees)**

| Financial Year | Arrears | Revenue Recovery Act | Court cases |
|---|---|---|---|
| 1998-99 | 985.66 | 104.63 | 52.20 |
| 1999-00 | 1,168.15 | 96.80 | 263.93 |
| 2000-01 | 1,047.34 | 188.35 | 327.13 |
| 2001-02 | 472.19 | 163.30 | 261.85 |
| 2002-03 | 462.55 | 172.39 | 243.17 |

The arrears for the years 2000-01 includes cases pertaining to levy of local cess and local cess surcharge. Consequent to the judgement of Supreme Court in August 2001 that local cess and local cess surcharge levied by the State was not correct, the arrears for the year 2001-02 was considerably reduced.

### 7.2.7 *Non-fixation/realisation of lease amount*

- Government issued in October 1995 guidelines for fixing lease amount based on the highest lease amount obtained during any of the previous years plus 20 *per cent* of such amount of the previous year, as first year amount and so on. However, consequent to scrapping of erstwhile Rule 39 in June 1996, Government revised the guidelines in October 1996 for fixation of lease amount for 1996-97 based on the highest amount secured in nearby quarries in tender-cum-auction. The High Court on an appeal by the lessees against the revision directed in September 1999 that before fixing lease amount, the DCs should take into account the potential value of the minerals, the estimated reserves and its market value. The Government decided in September 2000 to implement the orders of the High Court.

It was noticed in the office of the Director of Geology and Mining (DGM), that though the Director had fixed the lease amount for 1996-97 in respect of 118 leases granted in 14[27] Districts under the above rule according to the terms fixed by the High Court and forwarded to Government for approval in May 2000, the proposals were yet to be approved by the Government (June 2004). While sending proposals to the Government, the DGM fixed the lease amount only for 1996-97, whereas the lease amount was to be fixed for the subsequent years too. Of the cases sent to the Government, the lease period in 60 cases expired in 1999-2000 and in 58 cases it would expire in 2005-06

Failure of the Government to approve the lease amount in time in respect of 118 lessees had resulted in non-realisation of lease amount of Rs.395.17 crore for the period from 1996-97 to 2003-04.

- According to TNMMC Rules, all lessees of granite quarries who were granted leases prior to 1998 and were still in force, were to pay one time lease amount fixed by DC, besides seigniorage fee or dead rent. In the event of lease amount not being paid within the stipulated time of 60 days, the lease would be deemed to have been cancelled. Any person in possession of lease hold area, thereafter shall be deemed to be in unlawful possession of the said land. The DC shall, after giving notice, charge from the person double the rate of lease and evict the lessee from lease hold area.

During audit of the office of AD, Madurai, it was noticed, that M/s.Tamil Nadu Minerals Limited (TAMIN – a public sector undertaking) was granted leases in August 1998 in Katchirayanpatti of Melur Taluk for quarrying colour granite for a period of 20 years from 1996 to 2016 under erstwhile Rule 39. However, the Department fixed the lease amount of Rs.63.31 crore only in October 2000

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27 Coimbatore, Cuddalore, Erode, Kancheepuram, Karur, Madurai, Perambur, Pudukottai, Ramanathapuram, Sivaganga, Tiruvallur, Trichy, Villupuram and Virudhunagar.

after a delay of two years though the quarrying permits were issued in the interim period. The lessee failed to remit the amount within the stipulated period and the lease was cancelled in December 2000. However on further verification, it was seen that the leased area had not been taken over till date as stated by the Tahsildar, Melur in September 2004. The Department had neither taken proper effective steps to take over the land by evicting the lessee nor raised the demand for collection of double the rate of lease amount. This had resulted in non-realisation of the lease amount of Rs.126.62 crore.

### *7.2.8 Non-levy of dead rent*

Under the TNMMC Rules, as amended from time to time, the holder of a lease shall pay besides area assessment, seigniorage fee or dead rent whichever is higher at the rates prescribed. The rates of dead rent in respect of Black/Colour granite was Rs.6,000/Rs.5,000 per hectare per annum upto 29 June 1999 and Rs.15,000/Rs.10,000 respectively thereafter. The rate for sand is Rs.2,000 per hectare.

In terms of clause of form of lease for quarrying minor minerals by private persons (Appendix I to TNMMC Rules) if any part of the land assessment, cess or seigniorage fee (or dead rent) payable remains unpaid for 30 days after becoming payable whether formally demanded or not, it shall be lawful for the lessor at any time thereafter to declare the whole or any part of the security deposit to be forfeited and also to re-enter upon the demised premises or any part thereof.

It was noticed in three[28] districts, that in respect of 69 cases for the years between 1998-99 and 2002-03, dead rent for the period of inoperation was not collected. Failure of the Department to check whether dead rent wherever payable has been assessed or not had resulted in non-realisation of dead rent of Rs.36.96 lakh as detailed below:

| Name of the District | Name of the Mineral | Number of cases | Area (in hectares) | Dead Rent (Rs. in lakh). |
|---|---|---|---|---|
| Salem | Black Granite | 8 | 23.73.0 | 3.56 |
| | Colour Granite | 7 | 12.40.4 | 1.00 |
| Dharmapuri | Black Granite | 9 | 14.47.0 | 5.61 |
| | Colour Granite | 34 | 57.48.0 | 19.63 |
| Villupuram | Black Granite | 3 | 7.78.5 | 4.84 |
| | Sand | 8 | 63.00.0 | 2.32 |
| **Total** | | **69** | **178.86.9** | **36.96** |

[28] Dharmapuri, Salem and Villupuram.

### 7.2.9 *Incorrect refund of one time lease amount*

The TNMMC Rules provide for refund only where the State Government have made premature termination of a quarrying lease. As per the rules ibid if the grantee fails to execute the lease deed, all the amounts paid by him to the State Government shall be forfeited. Further the Collector, Nagapattinam by a notification issued in October 2000 calling for tender application for quarrying sand in Nagapattinam district had stipulated that even if the lessee has not utilised the land for quarrying, the lease amount cannot be refunded and the lessee has to make pathway to the quarry.

It was noticed in the office of the AD, Nagapattinam that in two cases, leases were granted for quarrying of sand for three years from December 2000 through tender-cum-auction system after collecting one time lease amount of Rs.11.50 lakh from each of them but the lease deeds were not executed. Based on the request of the lessees after a period of seven and 27 months respectively, the leases were cancelled since there was no pathway and a refund of Rs.23 lakh was made without sanction of the Government. The incorrect refund resulted in loss amounting to Rs.23 lakh.

After this was pointed out by audit, the Department replied that it would address the jurisdictional Assistant Director in this regard. Further reply was awaited (August 2004).

### 7.2.10 *Short recovery of stamp duty and registration fees on lease deeds*

As per Rule 31 of MC Rules, 1960 a lease deed shall be executed within six months of the order for grant of mining lease or within such further period as the State Government may allow in this behalf. If no such lease deed is executed, the State Government may revoke the order granting the lease and in that event the application fee shall be forfeited to the State Government.

As per Indian Registration Act, lease of immovable property for any term exceeding one year shall be registered compulsorily. The Indian Stamp Act, provides that on instruments of immovable property for period exceeding 10 years but not exceeding 20 years, stamp duty is to be levied as on a deed of conveyance for a consideration equal to twice the amount of royalty on minerals extracted or value of the average annual rent reserved.

Government clarified in 30 March 1998 that in cases of mining lease for periods exceeding five years stamp duty at seven *per cent* shall be leviable on the average annual value of such royalty payable.

- In Nagapattinam and Thiruvarur districts, lease for mining of oil was granted between 1986 and 1988 in respect of 15 oil wells to M/s Oil and Natural Gas Corporation (ONGC) for 20 years. However, it was noticed that in respect

of two oil wells, lease deeds were executed on stamp paper of nominal value of Rs.7. In 13 cases no lease deeds were executed till date. Resultantly, stamp duty and registration fees amounting to Rs.6.02 crore on the above wells based on the guidelines issued by the Government remains unrealised.

Mention was made in Para 9.2.18 of the Report of the Comptroller and Auditor General of India for the year 1988-89, about non execution of deed with the same assessee. The Committee on Public Accounts (45th Report/XIth Assembly) while discussing the report in December 1992 recommended that the matter should be settled as early as possible in consultation with Central Government. However even after a decade, the position remain the same and the lease deeds in respect of 13 new oil wells were not executed.

- In Cuddalore district, renewal of lease for mining lignite was granted to NLC for a further period of 20 years from December 1996. However, lease deed was executed on stamp papers worth Rs.2 lakh instead of as per the average annual value of royalty payable. The short-levy of stamp duty and registration fees amounted to Rs.4.48 crore.

After this was pointed out, the Department stated in August 2004 that the AD, Nagapattinam would be called upon to issue notice to ONGC demanding them to get the lease deed executed by paying stamp duty. It further stated that registration of lease deed was not compulsory at the time of execution of lease deed in December 1996 and compulsory registration of mining lease deed could be insisted only from November 2000. The reply is not tenable since the date of execution of the formal instrument of lease will be the date of commencement of the lease and not the date of the Government Order sanctioning the lease. Further prior to the amendment in 2000, execution was mandatory and thereafter not only the execution but also registration was mandatory. In view of this the mining lease should have atleast been executed by paying proper stamp duty.

The cases were reported to the Government in June 2004 and followed up with reminder in August 2004; their reply had not been received (September 2004).

### *7.2.11 Conclusion*

There was inordinate delay by the Government in fixing and recovering lease amount, royalty, compensation and dead rent and there was no proper mechanism to ensure that the mining leases were registered after payment of proper stamp duty.

### *7.2.12. Recommendations*

The Government may consider the following

- the proposals to grant leases sent to Government are finalised without delay;
- the Act and Rules are implemented properly while recovering lease rent; and
- the lease deeds are executed only after payment of proper stamp duty.

The matter was reported to Government in June 2004 and followed by reminder in August 2004; the reply had not been received (September 2004).

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**The**

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